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Report on the practicability of introducing in British India inheritance taxes (death duties) in respect of property other than agricultural land

BY

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REPORT ON THE PRACTICABILITY OF INTRODUCING IN BRITISH INDIA INHERITANCE TAXES (DEATH DUTIES) IN RESPECT OF PROPERTY OTHER THAN AGRICULTURAL LAND.

INTRODUCTION.

In pursuance of a suggestion which was made by some of the Provincial Representatives at the Conference of Finance Ministers held in New Delhi in January, 1938, the Government of India undertook to examine the practicability of drawing up proposals for legislation to be introduced in the Central Legislature so as to impose "duties in respect of succession to property other than agricultural land" under section 137, Government of India Act, 1935, and to make provision for the distribution of the proceeds of such duties between the Provinces; the task of conducting this enquiry was entrusted to me. After preliminary work at headquarters, including the preparation and circulation of a memorandum in which the special problems that attend such a proposal in India were set forth, together with some suggestions for their solution, I proceeded on tour in order to conduct informal discussions with the Provincial Governments. In the course of my first tour, I visited the headquarters of the Governments of Madras, Bombay, Bengal, the United Provinces, Bihar and the Central Provinces and Berar; on a later tour, I visited that of the Government of the Punjab; and I met a member of the North-West Frontier Province Government in Delhi. In view of the result, now to be reported, of these discussions, it did not seem to be necessary to visit the other three Provinces.

2. In order to encourage plain speaking, I had undertaken that my conversations with Hon'ble Ministers would be strictly confidential and that any views they might express would be treated as provisional and non-committal. I have, however, obtained the authority of the Provincial Governments to give publicity to their answers to the first question which I asked,—the fundamental question whether the tax under consideration was regarded as a generally desirable one, if special local difficulties could be surmounted. These answers are:—

(1) *Madras*.—The Government are not at present in a position to commit themselves to a definite opinion.

(2) *Bombay*.—The Government do not think that the matter is one which should be taken up pending the establishment of a popular Government at the Centre.

(3) *Bengal*.—The Government are opposed to the proposal on the ground that special difficulties exist in this country which make the imposition of death duties a form of taxation which is not suited to Indian conditions.

(4) *United Provinces.*—The Government, while in sympathy with the proposal generally, are not prepared to commit themselves to a definite opinion for want of full information regarding certain relevant points and also owing to the desirability of conferring with other Provincial Governments before taking a final decision.

(5) *Punjab.*—The Government are opposed to the proposal. They consider:

(i) that the yield would not be commensurate with the serious difficulties in the way of introducing such a measure and the great unpopularity attaching to such a form of taxation;

(ii) that it is far from certain that the Punjab would be able to secure its fair share in any scheme of distribution; and

(iii) that such a tax would entrench upon potential taxable capacity which would otherwise be available for provincial taxation.

(6) *Bihar.*—The Government do not think that the matter is one which should be taken up pending the establishment of a popular Government at the Centre.

(7) *Central Provinces.*—The Government are of the opinion that the matter may be dropped for the present.

(8) *North-West Frontier Province.*—The Government, though approving of death duties in principle, is opposed to legislation for their introduction in India because of the relative smallness of the yield, having regard to the serious practical difficulties involved and to the unpopularity which such a measure would arouse.

3. It is clear that the time is not yet ripe for considering the introduction of legislation, since the Central Government could hardly be expected to take such a step for the benefit of the Provincial Governments except with the full support of an important majority of those Governments. Nevertheless, my investigations have advanced sufficiently far to make it possible to put on record a series of conclusions, many of which have commanded general acceptance, on questions of primary importance, and, on that basis, to outline a scheme which could be embodied in a draft bill for circulation among the Provincial Governments when the time is propitious for further action. This is done in the attached Report.

REPORT.

The conclusions and proposals set forth in this report will be stated under the following general heads:—

I. Form of the tax.

II. Scope of the tax (personal aspects).

III. Scope of the tax (territorial).

IV. Scope of the tax (other aspects).

V. General considerations affecting the character of the tax.

VI. Distribution of proceeds.

N.B.—Parenthetical references below to "Meom." are references to the sections and paragraphs of the memorandum circulated to Provincial Governments with Finance Department letter No. 18-T. J. S./38, dated 28th November 1938. (Annexure I*).

I. FORM OF THE TAX.

2. A fundamental legal problem was not discussed with the Ministers, pending further examination by the Government of India; it is the question whether the entry in No. 56 of the Federal Legislative List would cover an inheritance tax in the form of *estate duty*, or whether its subject, being expressed as "duties in respect of succession to property", is confined to a true *succession duty* in the sense in which that term is known in other Parliamentary enactments. The view which may now be expected to prevail is to the latter effect; if therefore the estate-duty form of tax is to be adopted a necessary preliminary would probably be the issue of a notification by the Governor-General under section 104, Government of India Act.

3. There are strong practical objections to adopting the succession-duty form of tax, which will be mentioned below with reference to discussions with the Ministers. There are even stronger objections which were not put to the Ministers, pending the further legal discussions referred to above. The greatest is that the succession-duty form of tax would not cover the movable property of persons dying not domiciled in British India, even though the property were itself situate in British India. Politically, this would be fatal: no Indian legislature would pass an Act that excluded from its scope the movable property, *situate in British India*, of non-domiciled persons, including European investors and even European residents. An equally fatal objection is the practical one that Marwaris and other wealthy Indians could very easily avoid the tax on movable property situate in British India by establishing that their domicile was in an Indian State. It would also still be necessary to have a notification under section 104 authorising the imposition of a countervailing tax on Hindu undivided families, since in their case succession would be only notional.

4. For the sake of completeness, it may here be mentioned that all the Ministries consulted agreed that the estate-duty form is the only practicable one (compare Section IV of Memorandum); it will be forced upon us by the absence of compulsory representation (see

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remarks in Part V of this Report*) with the consequent absence of authoritative guidance for the revenue officers as to the shares of the various heirs to an estate. Apart from advantages mentioned in the Memorandum, the estate-duty form has the further advantage, in its application to Hindu undivided families, of depriving of all validity the argument that if duty is levied on the ground of accretion to the property of the surviving coparceners by reason of death of one coparcener, equity demands that compensation should be given when on the birth of a new coparcener their shares are reduced; that argument might have force if the tax purported to be a genuine succession duty but not if it was an estate duty, since the latter tax would be levied not on the ground of accretion to the property of survivors but merely as a capital levy on the property of the deceased deferred to the time of his death.

5. The rest of this report will be written on the assumption that the Government of India will be willing to ask the Governor-General to issue a notification under section 104, validating the recovery of tax in the form of estate duty. There is no substantial reason to doubt that a Federal law issued under the cover of such a notification could lawfully provide for the distribution of the proceeds on lines similar to those enjoined by section 137 of the Government of India Act; and it would be to nobody's interest to challenge such a provision.

II. Scope of the tax (personal aspects).

6. The proposition (Memo., I, 3 and 4) that it is neither equitable nor profitable to develop inheritance taxes unless they can be made applicable to all sections of the community has commanded general acceptance. It is therefore essential that means should be found to bring within the scope of the tax all estates succession to which is not now regulated by the Indian Succession Act; in particular, to draw the provisions of the law so that the property of Hindu undivided families will come under taxation at appropriate times and to an appropriate extent and so that the peculiarities of Muslim personal law will not operate to secure for that community *de facto* exemption from the tax, whether partial or complete.

7. It is also generally agreed that if a universal tax of this nature is introduced, allowance should be made in its assessment for so much of any court-fees incurred on taking out probate, letters of administration or succession certificates as can justifiably be described as having the character of taxation rather than of genuine fees for services rendered. (For reasons set forth in Appendix I†, the writer supports the view that the whole of the courtfees in question can properly be so described). This plan was preferred to the alternative of a complete or partial abolition of the existing courtfees on probate etc., partly because of a constitutional difficulty (Memo., I, 4) and partly because, in the case of mixed estates, such a measure would reduce the rate of courtfee applicable to the property (*i.e.*, agricultural land) on which the courtfees were not abolished. (The second objection might disappear in any Province in which there was legislation under No. 43 of the Provincial Legislative List).

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† Page 23.

8. The necessity of covering Hindu and Muslim estates is of fundamental importance in connection with the question of universal compulsory representation, which will be discussed later; but even if a scheme of taxation is adopted which avoids this difficulty, it is useless to shut one's eyes to the probability that the measures taken to secure the object in view will be likely to arouse considerable opposition. As regards many Hindu undivided families, (especially those governed by the Mitakshara law), it is likely that a scheme which imposes a tax on the occasion of a merely notional succession, (possibly on the basis of a notional partition at the date of such notional succession), will be attacked as militating against the fundamental principles of coparcenary and therefore as offending Hindu religious susceptibilities. With Muslims, again, while it is recognised that *wakf* property cannot be excluded from the scope of taxation, it is anticipated that measures designed to prevent this (to be discussed later) will evoke a great outcry on the ground that religious principles are being violated. The logical answer in either case is that the measures required will be confined to the levy of taxation so as to equate the burdens of all communities, and will not call in question the continuing validity under the law of property of the coparcenary system and of the *wakf*; but it is too much to hope that the cold logic of this argument will serve to extinguish the fires of religious sentiment. If opposition of such a kind is to be allowed to prevail, then the whole plan of a comprehensive scheme of taxation will fall to the ground.

III. Scope of the Tax (Territorial).

9. Conditions relevant to the inclusion of property as taxable to estate duty in any country may be—

(1) whether the property was or was not situate in that country, and

(2) whether the deceased owner did or did not personally owe fiscal allegiance by reason of habitation, etc., to that country.

10. In the British law of estate duty, the taxability of *immovable* property depends exclusively on the situation of the property itself, and the second test does not come into account; *movable* property situate in Great Britain is taxable in all cases; *movable* property not situate in Great Britain is taxable if it belonged to one who was domiciled in that country; (subject to the dual taxation relief arrangement, which leaves the country of situation, if one to which it applies, in undisputed possession of its own tax).

11. It was originally suggested that this scheme should be adapted to India, but after the Memorandum had been circulated, it became clear from the course of debates on the Indian Income-tax (Amendment) Bill that domicile as the test of "fiscal allegiance" would not be likely to be acceptable to Indian opinion; whether any other test should be substituted for it will be discussed later. So modified, the plan was that—

(1) all property, whether immovable or movable, situate in British India should be taxed, regardless of the country to which the deceased owner owed fiscal allegiance;

(2) immovable property situate outside British India should in no case be taxed; and

(3) movable property situate outside British India should be taxed if the deceased owner owed fiscal allegiance to British India.

12. The first of these propositions raised a difficulty of formidable dimensions, arising out of the rule that the "situation" of shares in a company is in the place where the company is registered. An important part of the industrial and even agricultural wealth of India, whether movable or immovable, is the property of companies registered abroad. This property cannot come within the scope of inheritance taxes except to the extent that the shareholders themselves do so for personal reasons; when the company is registered abroad, only such shareholders, if any, as owe fiscal allegiance to British India will yield tax to this country. All the rest of the value of the property of these companies will enjoy permanent immunity from the tax. It is no answer to this to point out that there has been a marked tendency of late for large non-Indian concerns to transfer their Indian business to subsidiary companies registered in India, for the reason that the shares in such companies are largely owned by the foreign companies concerned and to this extent the fact of Indian registry does not bring any mortal persons within the scope of taxation. In either case, much property which is itself situated in British India must fall outside the sphere of an inheritance tax because of the independent existence of a company. Such a result was criticized on equitable grounds: apart from this, it is clear that evasion would be greatly facilitated; it would, for example, be easy for a Marwari who was not an inhabitant of British India to take house-property in British India out of range by transferring it to a company registered in an Indian State.

13. It has to be admitted, however, that the difficulties in the way of bringing the property in British India of companies registered outside British India into the sphere of taxation are very great. The British rule of situation is in line with that which lays down that a debt is situate in the country in which the debtor resides, *i.e.*, in the courts of which recovery can be enforced. The country in which a company is registered can control the registry so as to secure that transfers of the shares of a deceased shareholder are known to the authorities charged with the recovery of death duties; that control is not available to another country in which the company operates. It is out of the question, owing to the provisions of section 113 of the Government of India Act, (apart from any other consideration) to lay it down that no company may own property in British India, including shares in a company registered in British India, unless it is itself registered in British India. Another solution was glanced at, *viz.*, that all companies (whether registered in British India or not) should be required, as a condition of owning property and operating in British India, to render assistance in the way of reporting transfers on death and recovering the tax due; but such a solution seems to

be quite impracticable unless it includes a stipulation that no company may operate in British India unless it declines to have other companies, or indeed any "persons" other than individual mortals or Hindu families, on its register of shareholders. That would involve a disturbance of the economic life of the country that would certainly not be justified by the objective, which is to safeguard the collection of a tax the yield of which could not at best be expected to raise the sum total of provincial revenues by more than 2 or 3 per cent. Apart from this, it would be practically impossible to prevent wholesale evasion of such a law. The conclusion is that it is not practicable to bring into the scope of this taxation the property in British India of companies registered abroad, (except to the extent that the shareholders come within the field for personal reasons): and we must be content to set against this conclusion the fact that there are numerous companies registered in British India (so that the shares are "situated" in British India) owning property abroad. especially in Indian States.

14. As regards *property abroad*, it was universally agreed that, following what may be described as international practice, *immovable* property outside the country should not be taxable. This, which was always the effect of the law in the United Kingdom, is now stated categorically in proviso (b) to section 24 of the Finance Act of 1936.

15. As for *movable* property situate abroad, it was generally felt that this must be taxable in the case of those owing fiscal allegiance to British India if only to prevent wholesale evasion of the tax by the removal of such portable property as bullion and bearer bonds to Indian States or elsewhere out of jurisdiction. It is true that tax on such property will only be recoverable if there is also property in British India on which the charge can be laid, *cf.* sub-section (2) of section 20 of the United Kingdom Finance Act of 1894, but that condition will be satisfied in most cases of any importance.

16. As for the test of "fiscal allegiance", the suggestion in the Memo. was that such property should be taxed if it belonged to a deceased who was domiciled in British India. The course of debates in the Legislative Assembly made it clear that the "domicile" test was not likely to commend itself readily to political opinion, and a supplementary note on this point was circulated at the request of one Provincial Government (Annexure II*). Despite the considerations there adduced, the general opinion was that it would be necessary to go over from the "domicile" to the "ordinary residence" test, not so much in order to catch that minority of British officials and business-men who die before retirement from India as to prevent wholesale evasion on the part of those Indian State subjects (especially Marwaris) who derive most of their wealth from enterprise in British India; these would find it unduly easy to establish "domicile" in an Indian State which charges no death duties or relatively low ones even though all other considerations made it fair to treat them as owing fiscal allegiance to British India. One Government would even go further and extend the income-tax definition of "ordinary residence" by deeming that a person is resident in British India if he does business there through any agent. In support of this it was suggested that it would be anomalous to treat differently one wealthy Marwari business-man who lives in a town in British

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India and another who conducts his business there through an agent. This proposal seems to be fraught with grave practical difficulties.

17. It was argued that the basis of ordinary residence was in itself more appropriate than the basis of domicile. The adoption of the latter basis in England is to be explained by the fact that the English law required universal representation in the case of domiciled persons, *i.e.* a disclosure of the assets of such persons, before any question of death duties arose. Apart from this historical consideration, there was the further fact that in England the situation is not complicated by the existence of numerous fiscally-independent States within the geographical borders of the country.

18. It is conceivable that the adoption of the "ordinary residence" test of liability may give rise to some difficulty in connection with the British arrangements for relief from dual taxation. If, like Great Britain, we adopted the "domicile" test, reciprocity would require us to grant relief only in the case of the property situated in Great Britain of persons domiciled in British India, since no other property so situated would be taxable here; if we adopt the "ordinary residence" test, reciprocity will require us to grant relief in the case of the property situated in Great Britain not only of all (or practically all) the owners of such property who are domiciled in British India, but also of a much larger number of persons who are "ordinarily resident" here though domiciled in Great Britain. To that extent, we shall have imposed the liability to taxation with one hand only to remit it with the other. But this is not a serious breach of our position: the safeguard against evasion by the transfer of movable property to Indian States or to other countries with no death duties would still stand, and it is only in exceptional cases that persons of British domicile die while they are still "ordinary residents." Normally, they live to retire out of India and, so ceasing to be "ordinary residents", automatically pass outside the scope of British Indian taxation except in respect of property situate in British India.

19. *Dual taxation relief.*—It was generally agreed (except by the Government which raised the point about the taxation of the British Indian property of foreign companies) that dual taxation relief should be granted on the British model; that full relief should be available in respect of all countries, whether inside the British Empire or not, that satisfy the conditions of non-taxation or reciprocity; and that the partial relief which consists in the reduction of the *value* of the foreign property by the amount of the foreign tax should be given in other cases. As in the United Kingdom—see subsections (3) and (4), section 20, Finance Act. 1894—the nomination of the countries in respect of which full relief is granted should be in the hands of the executive Government, who would satisfy themselves from time to time that the necessary conditions were really fulfilled.

IV. Scope of the Tax (other aspects).

20. *Agricultural land.*—Any federal law must be confined to property other than "agricultural land". This expression, being contained in the Government of India Act, 1935, cannot be defined by an Act of an Indian Legislature but can only be interpreted by

the Courts. A plan was suggested (Memo., III, 7—9) whereby an attempt could be made to avoid litigation. That plan was, however, defective in that it suggested the inclusion of a definition in the Federal Act. It also involved the issue of demands for tax in the alternative under two different laws, one Federal and one Provincial, and it was doubted whether this would be legal. It could be modified as follows, in order to avoid these defects: it would be left to executive orders to specify the rights in respect of agricultural land succession to which should be treated as succession to agricultural land, and there would be a provision to the effect that if any property had been excluded from the Federal assessment under such orders and if, in a Province where there was a duty in respect of succession to agricultural land, a successful claim to exemption of the said property from the Provincial tax was made, a belated assessment to the Federal tax could be made (such tax, as in the original plan, to be recovered by and credited to the Province concerned). This would prevent the falling of any property between two stools and, as the Federal tax would probably be at a higher rate than the Provincial tax, it would be a useful deterrent to the litigious challenging of a demand made for tax by the Provincial Government, though it would be left to the Courts, *in the last resort*, to settle doubts as to classification.

21. This revised plan was not evolved in time to put it to more than three Governments, but by these it was received favourably. At an earlier stage, it had been suggested by one Government that it would be desirable to clear the whole matter up, once for all, by a reference to the Federal Court under section 213, Government of India Act, to be made before legislation was actually undertaken. The drawing up of such a reference would be a most formidable task.

22. There was a real difficulty, however, as to the details of such a settlement "out of Court" as the revised plan envisages, because there was not complete agreement as to what items should be excluded in practice from the Federal tax. At one place, it was suggested (wrongly, as the writer thinks) that any property which yielded "agricultural income" must be classified as "agricultural land" (Memo., III, 3); while another Government held on merits, that the exclusion of "agricultural land" must be made as comprehensive as possible. On the other hand, one Government took the view that the rights in agricultural land of the owners of large zemindaris could be, and should be, taxed by the Federation—the object being, possibly, to get at them without the necessity of Provincial legislation; but the majority of the Governments consulted would (subject to the rulings of the Courts) keep succession to the rights in agricultural land of (1) zemindars (2) thikadars (3) tenure holders and (4) raiyyats within the Provincial sphere, while referring to the Federal tax such things as shares in companies owning agricultural land (Memo., III, 3).

23. As for the question what objects, in a physical sense, should be left to the Provincial tax, if any, (Memo., III, 8) it was thought that agricultural buildings, implements, etc., should go with the land, but only such cattle as are used for agricultural purposes (*i.e.*, not the cattle owned by a dairy).

24. *Transfers of property not actually made at death, but deemed to be so made* (Memo., V, 5-7).—It was universally agreed that the fullest advantage of British experience should be taken and similar measures adopted in India. It was, however, emphasized that this would create great difficulties in connection with transactions under Muhammadan law. It is said that that law itself imposes restrictions on gifts made during fatal illness and debars the making of gifts unaccompanied by the surrender of the property (though the question arises whether a gift to a wife of a house in which the husband himself continues to reside would not be regarded as one in which the property was surrendered); the real trouble is that created by the case of Wakfs.

25. If Wakf property is left out, there will be a strong stimulus to the greatly extended use of this form of disposition [Memo. V. 6, I, Note (2)]. Its use will not be universal, because the Muhammadan law imposes certain obstacles to the creation of *wakfs*, notably, their irrevocable character; nevertheless, it will be likely to be so widespread as to reduce greatly the contribution which this community ought in fairness to make to the yield of an inheritance tax. It is essential to make adequate provisions to meet this danger: but there can be little doubt that such provisions will cause a great outcry that religious principles are being violated. The matter will be much more contentious than in connection with income-tax; income-tax is levied on the income of a private religious trust so long as it does not enure for the benefit of the public; but estate duty would (in some cases, at least), be leviable at the moment when the income of the trust begins to enure for the benefit of the public, *i.e.*, would be recoverable from property which had just passed out of even notional private ownership. It will probably be contended that there is then no property from which it will be permissible to make recovery of the tax; indeed this contention will perhaps be raised even when the use of the property merely passes from one private beneficiary to another. One Government suggested that, though it was necessary to adopt the estate duty form of tax for reasons of administrative convenience, this need not prevent us from recognising the facts of succession in determining liability, and that this might suggest a solution of the problem that would arise when the use of the property passed, on the death of a beneficiary, from private use to public use. For example, in the case of a *wakf* created by a Muhammadan for the maintenance and support wholly or partially of his family, children or descendants, with ultimate reversion to religious or charitable purposes, the inheritance tax could be levied on the death of the settlor and of later beneficiaries, until the ultimate reversion to religious or charitable purposes was reached, at which stage no tax would be leviable. This would logically imply the exemption of bequests by members of all communities to religious or charitable purposes: in England, bequests to charity pay full estate duty and the highest rate of succession duty. It is perhaps wisest not to violate the integrity of the position created by the inherent character of an estate duty as a levy on the capital of the deceased.

26. Mention was made of the special case of hereditary annuities known as *wasiqa*, derived from a disposition made by the Nawab of Oudh over 100 years ago. This case will need examination.

27. As regards revocable trusts or settlements, it should be observed that the British Law [Finance Act, 1894, 2 (1) (*c*) read with Customs and Inland Revenue Act, 1881, 38 (2) (*c*)] includes among property deemed to pass on death property passing under any voluntary settlement made by the deceased whereby the settlor may have reserved to himself the right, by the exercise of any power, to restore to himself, or to reclaim the absolute interest in such property. On the analogy of the third proviso to section 16 (1) (*c*) of the Indian Income-tax Act, 1922, as amended by the Act of 1939, it may be suggested that this should not apply if the right to reclaim the property was not exercisable for a period exceeding six years or during the lifetime of the deceased (and had not been exercised). Such a suggestion would have to be resisted. The parallel with income-tax is entirely incomplete; for the recognition of a trust by the Income-tax Department leaves the income taxable in the hands of the actual beneficiaries (or their trustees), but its recognition in connection with an inheritance tax would destroy its taxability altogether at the stage of the settlor's death. In any case, such a trust made within a given period (say, three years) of death would have to be given the same treatment as a gift made within the same period (Memo., V, 6, IV).

28. It was pointed out that the English three-year limit applying to gifts would be much less effective in India than in England, because in India the making of gifts otherwise than in anticipation of death is much more common than the making of wills, which is the form of benefaction to which the English mind is most accustomed. It would not seem to be practicable to do anything to meet this. beyond insistence upon the condition that a gift unaccompanied by surrender of the property is not recognised for inheritance tax purposes.

V. General considerations affecting the character and form of the tax.

29. Firstly, *the question of compulsory representation* (Memo., II, 2 and 3). The universal necessity of probate or letters of administration under English law greatly facilitates the recovery of death duties in that country. Nevertheless, it is unanimously agreed that in India it is not practicable to insist upon this as a preliminary to taxation. Though it may be true (as the Civil Justice Committee said) that a universal and compulsory system providing for representation on succession to property is in itself desirable on other grounds as an ultimate goal, the achievement of that goal might be hindered, rather than helped, by an attempt to make it a condition precedent to the imposition of an inheritance tax.

30. It is true that, in certain circumstances, succession certificates have to be taken out by persons belonging to the communities that lie outside the scope of the main provisions of the Indian

Succession Act (*cf.*, for example the provisions of the Imperial Bank of India Act, 1920, Schedule II, Rule 11), but the answer to this is that such succession certificates only apply to specific kinds of investment, the remainder of the estate being left to be administered without formal representation, and that, if they object to representation to this limited extent, members of the communities concerned are at liberty to avoid those particular kinds of investment. In any case, such a system would not solve the problem of the Hindu undivided family, since in the case of their coparcenary property there is no succession, and therefore no need for letters of administration or a succession certificate, until the last member of the family dies.

31. It should be remembered in this connection that the Imperial Bank of India Act was amended in 1934 so as to make it sufficient that the successor should obtain an *ad hoc* succession certificate for the shares in the Bank and not general letters of administration; that the provisions of the Indian Companies Act, 1913, Schedule I, Table A, Regulation 21, which would appear to require the production of formal probate or letters of administration in all cases are not mandatory but merely serve as a model; and that in practice, the Articles of Association of Indian companies generally provide for discretion to the directors to dispense with formal administration in suitable cases.

32. It cannot therefore be contended that the principle of compulsory representation has been already admitted, to any significant extent, by the communities likely to be the most affected by its incorporation in the law. Many members of these communities, particularly Muslims, would be certain to put up the strongest opposition to its introduction, as constituting an unwarrantable interference with their traditional social and religious law.

33. *Assessment and recovery of the tax without formal representation* must therefore be possible if the scheme is to be proceeded with at all. The general opinion is that the plan suggested (Memo., II, 4) could be adopted with reasonable hopes of success, but the assent of several Governments to this proposition was subject to the condition that the exemption limit should be much higher than anything that has previously been contemplated. The argument is, firstly, that evasion will be unduly easy for those who are not already on the books of the Income-tax department, and that with an exemption limit of Rs. 2,000 per annum for income-tax, the corresponding exemption limit for a tax on capital must be placed as high as Rs. 25,000 or Rs. 30,000; secondly, that a high exemption limit will greatly reduce the inconvenience to the public (and consequent unpopularity) of the tax and also the cost of collection (see paragraph 42 below). The effect of such a high exemption limit on the yield of the tax will be discussed later. (One Government was reluctant to accept the necessity of a high exemption limit, but that was because the Government in question appeared to value the prospect of Central taxation mainly as an offset to and justification for Provincial taxation under No. 43 of the Provincial Legislative List.

which they had in view and for which they thought that a high exemption limit would be unsuitable).

34. As regards details, it was pointed out that the advantages of the "estate duty" form of taxation over the "succession duty" form will disappear if the tax has to be recovered from successors in proportion to the share of each; it thus becomes necessary, in cases where there is no executor or administrator, to impose on the heirs a joint and several liability for payment of the whole tax (as is the case with funeral expenses and debts). Ordinarily speaking, recovery would in practice be made from the heir who was in possession of the largest part of the estate, and it would be left to him to make appropriate recovery from the other heirs. There could be express provisions to enable any heir who can prove that his share is only a small one to apply for exclusion from the joint and several liability; this would transfer to such person an onus of proof which would be intolerable if laid upon the revenue officer himself.

35. *Hindu Undivided Families.*—As already stated, it is necessary to provide for the taxation of these families, in cases where there is no true succession, on some equivalent basis. The idea of a periodical "capital levy" on those families at fixed intervals, and not in relation to any particular death, was propounded by the Legal Adviser to the Taxation Enquiry Committee in connection with *tarwad* families in Malabar; and the possibility of extending this plan to all undivided families was considered at one place. It did not, however, find favour elsewhere; and is open to the objection that a valuation made at fixed dates, known in advance, would present great opportunities of evasion, by transfer of the property in *benami* transactions or by disposing of it and reinvesting in agricultural land (if that remains untaxed) long enough to cover the time of assessment. The Legal Adviser's plan of recovering the amount in annual instalments would not meet this danger unless there was an annual assessment also, and a tax so collected would come perilously near being regarded, and resented, as an addition to income-tax. Finally, such a tax could not make any claim to the character of a duty "in respect of succession to property" and would presumably become a capital levy, covered by No. 55 in the Federal Legislative List (and not mentioned in section 137).

36. The general opinion expressed was that the levy of the duty on a Hindu undivided family must be related to the death of some member of the family. With Mitakshara families there were three possibilities:—

(1) that on the death of any member of the family (other than a minor whose father was alive), duty should be levied on what would have been the deceased's share if partition had taken place at the moment of his death;

(2) that on the death of the head of a branch (*i.e.*, any member of the family with no living male ascendants or elder brother), duty should be levied on the sum of what

would have been the shares of all members of the branch had partition taken place at the time of death: and

(3) that the whole estate should be taxable whenever the death occurred of the senior member of the family, *i.e.* the one who would naturally have been the *karta* or manager in the absence of any special arrangement to the contrary.

Plan (1) is that which had been recommended by the Taxation Enquiry Committee (Memo., II, 7), with the modification that it was not thought necessary to confine the exclusion of minors to cases where the deceased was survived not only by his father but also by another lineal male ascendant.

Plan (2) has the advantage of producing results comparable to those which would follow from the operation of the Dayabhag law.

Plan (3) resembles that discussed in paragraph 98 of the note of the Legal Adviser to the Taxation Enquiry Committee (Report, Vol. II, page 235) but the modification which ensures that the death taken is not necessarily that of the *actual* manager meets one of that writer's objections. Another objection retains its force, namely, that the position of senior member might pass from brother to brother and in that case there might be unduly frequent succession. To meet this an exceptionally generous rate of "quick succession relief" could be allowed in favour of such Hindu families; but there would be difficulty in facing public criticism if two different rates of such relief were allowed, a particularly high one for one community and a much lower one for all others.

At one of the later meetings attended an alternative solution of this difficulty, which seems to be decidedly attractive, was propounded; its adoption would produce a fourth plan in place of the third, *viz.*—

(4) that the whole estate should be taxed on the death of the last survivor of each grade or generation.

37. No general agreement as to which of these plans should be preferred can be recorded. It is recommended that when the time comes to draw up and circulate definite proposals, the draft should embody plan (1) but it should be made clear that opinions as to whether plan (2) or plan (4) is not to be preferred should be invited. It will be recognised that, with a high exemption limit, plan (1) is likely to leave untaxed many families which would be taxable under the other two plans; but on the whole this is a result calculated to approach more nearly than the others to what might have been expected to occur if the family had belonged to some other community, the personal law of which does not recognise the principle of coparceny.

38. If the objection stated above to a "capital levy" in the case of Hindu families is sustained, it will be necessary to devise some special plan to deal with the Malabar families, *e.g.*, by providing, in connection with plan (1), for the taxation of what would have been the deceased's share if there had been a voluntary partition at the time of his death on the basis of equal shares among adults.

39. *Level of incidence.*—It has been already mentioned (paragraph 33) that a very high exemption limit is considered to be necessary if there is to be any hope of successfully working a scheme that does not depend upon compulsory representation. A limit of Rs. 25,000 was thought suitable by some—others would go even higher.

40. It is also undesirable that the maximum rate should—at any rate, in the first instance—be so high as to precipitate immediately the worst difficulties that may be expected to attend the introduction of the tax. Moreover, even though the succession duty form cannot be adopted, it is fair to allow for the fact that sub-division of estates on succession is likely to be much commoner in India than in England. The writer's suggestion is that, above the exemption limit of Rs. 25,000, the rates should be fixed (on the slab system), so as to yield an incidence closely approximating to the incidence on estates above Rs. 25,000 of the Bombay scale of probate courtfees. A scale of estate duty that would produce this result is as follows:—

To Rs. 25,000	*Nil.*
From Rs. 25,000 to 3 lakhs .	5% of excess over Rs. 25,000.
From 3 lakhs to 5 lakhs . .	tax as above on 3 lakhs, *plus* 6% on the excess.
Above 5 lakhs . . .	tax as above on 5 lakhs, *plus* 7% on the excess.

41. A calculation made on the admittedly very hypothetical basis described in the Memorandum, Section VI, shows that this scale might be expected to produce an annual yield of about 1½ crores.

42. It may be remarked that the entire exclusion of estates below the equivalent of Rs. 25,000 would have reduced the total value of taxed estates in Great Britain by approximately 10 per cent. only, and the total estate duty collected by the astonishingly small margin of less than 1½ per cent., though the number of estates to be brought under assessment would have been reduced by as much as 70 per cent. (See Appendix II). For obvious reasons the effect of this high exemption limit would be relatively much greater in India, but this has been allowed for.

43. One Minister was anxious to secure that there should be an exemption in respect of jewellery and household property and, in particular, wearing apparel, both because the attempt to tax succession to such articles would cause extreme discontent, especially in connection with the property of women, and also because chicanery and fraud would be unduly easy. Such an exemption might be objected to on the ground that it would lead to the diversion of funds to non-productive investment, which would be socially undesirable, though this danger might in part be met by a provision relating to sales of securities and the purchase of jewellery etc. in their place within a certain interval before death comparable to the provision that would have to be made regarding gifts *inter vivos*. It will be recognised that this point will be largely met by the fixation of a really high exemption limit.

44. The question of aggregating the value of agricultural land and of other property for the purpose of fixing the rate applicable (assuming a graded scale of tax) was discussed. If agricultural land is completely disregarded in the assessment of the Federal tax there will be obvious anomalies: thus, supposing there is no Provincial tax on agricultural land, the estate of a wealthy zamindar may be totally exempt from Federal tax, though the combined value of the estate, and therefore the capacity to pay, is considerably greater than the value of an estate which contains no agricultural land and which is taxable; similarly, even if taxable, the zamindar's non-agricultural property may pay at a lower rate than that of a much less wealthy person whose estate is wholly non-agricultural. Again, if there is a Provincial tax, it may happen that if half of a man's estate is agricultural land, half not, each half will be exempt though an estate of equal value which was wholly agricultural land or wholly not would be taxable. To take the value of agricultural land into account in assessing the other property, whether for the purpose of applying the exemption limit or for that of determining the rate of tax, would be criticised on the ground that it amounted, in effect, to taxing agricultural land under the Federal Act, which would be *ultra vires*. There was a proposal in the Income-tax Enquiry Report, 1936, that "agricultural income" should be taken into account in the assessment of other income; but this was vehemently criticized on the same ground and the Government did not adopt the proposal when drawing up the recent Amendment Bill.

45. *Machinery for collection.*—The plan outlined in Section VII of the Memorandum was generally approved. The suggestion of one Minister that, for psychological reasons, it would be well to provide for reports of death being made to the District Collector rather than to the Assessing Officer is counterbalanced by the view expressed elsewhere that it was not desirable to use the services of the Provincial revenue officers any more than was absolutely necessary.

46. The suggestion that the Provinces should not claim "agency" payments for work done by their own officers otherwise than in proportion to the amount of tax collected in each Province which went to other Provinces (Memo., VII, 1) was objected to; it would clearly be unsuitable if distribution of proceeds were on a percentage basis. At the same time, the fixation of a high exemption limit will greatly reduce the number of occasions on which officers of the Income-tax department will have to invoke the aid of Provincial officers.

47. It was remarked that whatever agency collects the tax in India will find its task much more difficult than the task of the corresponding officers in Great Britain, owing to the comparative lack of competent and experienced valuers in this country.

VI. Distribution of Proceeds.

48. In the Memorandum (Section IX) it was suggested that distribution should be made with reference to the actual facts of each assessment: the factor of "situation" to be the determining

one in the case of immovable property and of chattels; the factor of "residence", where existent, to prevail in respect of all other assets; and the balance, to which neither of these factors applies, to be distributed on a population basis. Of the seven Governments which offered their opinions, only two favoured this scheme (subject to the elimination of anything but immovable property from classification by "situation"). The others objected to this plan on the ground that it was unworkable, resting as it did upon the maintenance of complicated records of the details of each assessment proceeding and upon their proper compilation by a staff which, if not to be unduly expensive, would be liable to make serious mistakes. It was pointed out, in particular, that it would be a difficult task to apportion minus items, such as debts, between the different parts of each estate.

49. Another objection to the scheme outlined was that it gave undue importance to the factor of "residence". On the other hand, to make population (as the measure of needs) the main, or sole, criterion would be unduly illiberal to a province like Bombay. The conclusion was that, in the first instance, distribution should be on a *percentage* basis, the figures taken to be those applicable for the time being to the distribution among provinces of the prescribed percentage of the net proceeds of taxes on income (sec. 138, Government of India Act, 1935 and the Distribution of Revenues Order, 1936). It was remarked that the award in this Order-in-Council could be described as an intelligible compromise between the claims of location and of needs (as measured by population) and had the sanction of having been laid down after an elaborate enquiry conducted by an expert. The whole question of the distribution of proceeds should be reconsidered after the first five years' operation of the tax. One Government objected to this proposal, because it considers that its share of income-tax under the Niemeyer award is in itself inadequate and should not be made the basis for further distributions.

50. It was generally agreed that so much of the courtfees on probate etc. as is remitted in the assessment of the new tax—see paragraph 7 above—should be taken into account in the distribution of proceeds, though this would hit the Government of Bengal heavily; it is almost certain that their collections of courtfees under these heads are much in excess of 20 per cent. of the total collections in British India under the same heads, because of their enhanced rates and because of the location of the Calcutta High Court in the Province (Memo., IX, 7). With a percentage basis of distribution, the matter would be simpler than was indicated in the Memorandum: the amounts of courtfee allowed in the course of assessment as a deduction from the estate duty payable would be compiled and recorded as a debit to the Province which had received the courtfees and as a credit to the central fund for distribution on the percentage basis. The central fund would thus nominally exceed the actual net collections of estate duty by the sum of these credits, but after the distribution by percentages had been calculated the debits above-mentioned would be made to each Province's share, so that

the sum of the net amounts distributed would be equal to the actual net collections of estate duty.

Statistics of actual collections of courtfees on probate are so incomplete as to be of little value for the consideration of the present subject (see Appendix III*).

51. *Taxation limited to immovable property.*—One Government, which was disposed to welcome the introduction of Federal death duties on merits, was particularly attracted to it by the consideration that it was difficult to introduce Provincial succession duties on agricultural land (which they favoured) in the absence of corresponding taxation of other property. They felt that the need for avoiding such discrimination was strongest in connection with non-agricultural land and therefore inclined to the view that, even if there must be delay in introducing a general scheme of Federal taxation under section 137, a limited measure bringing only *immovable* property in British India (other than agricultural land) under taxation should be introduced at an early date. The idea would be to have provisions for the taxation of such property which would come into force in each Province as and when that Province brought into force its own taxation of agricultural land. Such a measure would relieve us of the difficulties about the taxation of property abroad mentioned in paragraphs 15—18 above, would leave the question of the rates of duty and level of exemption for settlement in each Province in accordance with the corresponding provisions of the Provincial law relating to agricultural land, and would presumably make the distribution of proceeds to the Provinces follow the location of the immovable property. Otherwise, all the problems described in this report would have to be settled before this limited scheme could be put into operation. In particular, the difficulty discussed in paragraphs 12 and 13 regarding the property of foreign companies owning property in British India will not only still exist, but will be aggravated by its extension to the property of companies registered in British India, since shares are movable property. So far as British Indian companies are concerned, it will be necessary (in order to prevent evasion) to deem shares in such companies to be immovable property in so far as their value includes an element corresponding to the value of the immovable property in British India owned by the company, but it will be a very complicated task to evaluate this element, and, where the immovable property is distributed over several Provinces, to split up its value so as to allow for exemption (in Provinces where there is no agricultural land tax) and assessment at rates varying from Province to Province (in other cases).

Conclusion.

(*N.B.*—The marginal references in this part are to earlier paragraphs in this Report).

52. As already stated, the time does not seem to be ripe for the introduction of actual proposals for legislation, and the only purpose

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of this Report that can be achieved is the placing on record of a discussion of the main problems presented and of an outline of definite proposals which can be circulated at some future date when prospects seem to be more favourable.

53. When that time comes, it will be necessary first to enquire whether the Governor-General is willing to pass an order under section 104, Government of India Act, assigning to the Federation the right of imposing taxes in respect of property other than agricultural land which passes, or is deemed to pass in connection with the death of any individual, not being duties in respect of succession to such property, and to the Provinces the right of imposing such taxes in respect of agricultural land so passing, or deemed to pass, not being duties in respect of succession to agricultural land. (*N.B.*—The words "deemed to pass" are necessary to cover (i) the case of Hindu undivided families and (ii) the taxation on estate duty lines of gifts *inter vivos*, cessers of interest &c.). **Paras. 2-5.** **Para. 35.** **Para. 24.**

54. Thereafter it is suggested that detailed proposals should be drawn up, perhaps in the form of a bill, comprising the following provisions; (the marginal references are to paragraphs of this Report).:—

I. Liability.

(i) Imposition of estate duty (section 1 of U. K. Finance Act, 1894, as adapted in Appendix IV* to this Report, paragraph 1). **Paras. 2-5.**

(ii) Inclusion in the category of property passing on death of—

(*a*) property and rights as defined in section 2(1) of Finance Act, 1894, (as adapted in Appendix IV, paragraph 2); and **Para. 24.**

(*b*) so much of the property of a Hindu undivided family as represents what would have been the share of the deceased if partition had taken place immediately before his death (special provision for Malabar families). **Para. 37.**

(iii) Provisions regarding the taxation of movable property situated outside British India (as in Appendix IV, paragraph 3). **Para. 15-16.**

(iv) Saving clauses corresponding to sections 2(3) and 3 of Finance Act, 1894, read with section 59 of Finance Act, 1910.

(v) Aggregation of all property (other than agricultural land) so as to form one estate as in Finance Act, 1894, section 4, with proviso as modified by Finance Act, 1900, section 12, Finance Act, 1907, section 16 and Finance Act, 1927, section 51.

(vi) Provision for relief from double taxation in the case of settlement between husband and wife in certain circumstances on the lines of Finance Act, 1894, section 5 (2), as restricted by Finance Act, 1914, section 14, and read with Finance Act, 1898, section 13.

(vii) Exemption for settled property where an interest fails owing to premature death as in section 5 (3) of the Finance Act, 1894, (as amended by section 48 of Finance Act, 1938).

N.B.—There will be no provision for the payment of "settlement estate duty" or for the grant of reliefs from estate duty in consideration of the payment of settlement estate duty, as laid down

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in section 5 and section 21(1) of the U. K. Finance Act, 1894: in Great Britain these provisions were abolished in respect of future deaths by the Finance Act of 1914.

Para. 24 (viii) Provision for the taxation of property which has been transferred by the deceased to a private company with the effect that, in the absence of special provision, death duty will be avoided. (Finance Act, 1930, sections 34 to 38, as amended by section 49 of Finance Act, 1938).

Valuation of property.

(ix) Allowances for funeral expenses and certain debts as in Finance Act, 1894, section 7(1) and (2);

(x) Allowance for extra expense due to administration abroad, *ibidem*, 7(3);

(xi) Definition of the principal value of property as the price which the property would fetch if sold in the open market at the time of the death, *ibidem*, 7(5), with a certain option in cases of interests in expectancy, *ibidem*, 7(6);

(xii) Valuation of benefit accruing from the cesser of an interest ceasing on the death of the deceased as the principal value of the property if the interest extended to the whole of it, otherwise in proportion, *ibidem*, 7(7);

(xiii) Inclusion of income accrued up to date of death, *ibidem*, 6(5).

Assessment and collection of duty.

(xiv) Appointment of assessing officers under the Central Board of Revenue and attached to the Income-tax department, with suit-
Para. 45. able amendment of section 54 of the Indian Income Tax Act. Power to invest officers of the District administration with duties and powers under the Act;

(xv) Obligation on successors to report each death, with ancillary provisions as in Memo., II, 4(a). (In the case of Hindu undivided families, the obligation might lie on all adult male members);

(xvi) Assessing officer to call for returns and make assessment of tax, Memo., II, 4(b);

(xvii) Allowance in assessment for courtfees on probate, etc.
Para. 7. already paid on the same property and refunds of estate duty on proof of subsequent payment of such courtfees: provision for apportionment of debts etc. between agricultural land and other property where the estate brought to probate, etc., was mixed.

(xviii) Provision for valuation, under rules made by the Central Board of Revenue, at expense of Government [Finance Act, 1894, 7(8) and (9)];

Para. 34. (xix) Recovery of duty: payment to be a joint and several liability on all successors, subject to right of any individual successor on proving that his share of the estate was less than the tax demanded from him to have such demand reduced accordingly. Provision

enabling successors who have paid the duty to recover their shares from other successors in the Civil Courts. In the case of Hindu undivided families, recovery to be made from the family itself.

(xx) Non-suiting of litigants in certain cases and prohibition of registers of transfers, where tax has not been paid or its recovery put in train (Memo., II, 5);

(xxi) Payment by instalments on immovable property—Finance Act, 1894, section 6(8)—and postponement of payment, subject to payment of interest, as in same Act, section 8(9);

(xxii) Enforcement of payment; penalties, etc. (Memo., II, 4). Charge on the property itself, (Finance Act, 1894, section 9);

(xxiii) Appeals, etc. (follow Income-tax model);

(xxiv) Exemptions, *cf.* Finance Act, 1894, section 15(1)—(3);

(xxv) Quick succession allowances, (Finance Act, 1914, section 15);

(xxvi) Provision for determination by Central Board of Revenue what property in case of doubt is to be treated as "agricultural land"; and for belated assessment if, after any property has been so treated in the assessment of Federal Tax, a claim is made and established that it is not in fact "agricultural land" and therefore exempt from any Provincial duty in respect of succession to agricultural land that would otherwise have been applicable to it. Such belated assessment to include re-calculation of the Federal tax on the whole estate, if the rate applicable is affected. **Para. 20.**

Dual Taxation Relief.

(xxvii) Provision for deducting from the *amount* of tax assessed on property situated outside British India the amount of death duty recovered in the country of situation, provided the Government have notified that such country is one in which (1) no such tax is levied on property situate in British India, or (2) a reciprocal allowance is made. (Finance Act, 1894, section 20); **Para 19.**

(xxviii) Deduction from the *value* for tax of property situated in any country to which the above does not apply of the amount of death duty paid in such country [Finance Act, 1894, section 7(4).] **Para. 19.**

Rate of Tax.

(xxix) Rate of tax and exemption limit. **Para 40.**

Distribution of Proceeds.

(xxx) A calculation to be made dividing between the Provinces, in the same shares as apply at the time to the distribution of a percentage of the net actual proceeds of taxes on income, an amount equal to the sum of the net actual collections of the death duty and of the amounts allowed under proposal (xvii) above; the shares so calculated of each Province, less the amount of courtfees collected there on account of which and to the extent that the above allowance has been made, to be the amount disbursed to the Province out of the actual net collections. **Paras 48-50.**

Definitions.

(xxxi) Definitions generally on the lines of section 22 of Finance Act, 1894.

Para. 51. 55. If the idea of a special tax confined to immovable property other than agricultural land is followed up, these proposals will still be generally suitable, subject to the omission of numbers (iii), (x), (xxvii) and (xxviii), the extension of the scope of number (viii), and the substitution for (xxx) of an arrangement for assigning the tax collected in each case to the Province in which the property is situated. There will also have to be a provision for bringing the law into force only in such Provinces as have a similar tax relating to agricultural land and fixing the rate of duty and limit of exemption at levels consonant with the scheme of the Provincial tax.

A. H. LLOYD.

3rd April 1939.

APPENDIX I.

The Legal Adviser to the Taxation Enquiry Committee (Vol. II, page 168) made the following remarks regarding stamps paid on probates, letters or certificates of administration and succession certificates :—

"These receipts do not constitute fees for services rendered, but are really taxes on succession, and it is only an accident that courts of law constitute the present machinery for their collection. They should not be added to the receipts of courts which are being taken into consideration for determining whether the Government is making a profit on the administration of justice. For a service rendered by the court in connection with these proceedings, it takes a separate fee on the application under Schedule II, Article I of the Court-fees Act."

2. It was argued, by one Minister, that these courtfees, though unduly high if regarded as fees simply for the recording of probates, etc., contained, in effect, another element; they were in part litigative fees because they were flat rates which secured what was almost complete exemption from the ordinary litigative courtfees in probate cases where there was a dispute. It was suggested that in taking the existing courtfees into account for the purpose of death duties a distinction might be drawn between litigative and non-litigative probate cases, but the final conclusion was against this complication. It was, however, held that some portion of the courtfees should be allowed to remain and should not be deducted from the death duty.

3. This contention seems to be quite misconceived. In the first place, it overlooks the fact that in High Courts, where most probate cases are dealt with, there are no special "litigative" courtfees in the case of other disputes. Courtfees are payable in the High Court at the various stages of a disputed probate case on the same basis as those payable at the corresponding stages of other cases, *e.g.*, trust and guardianship cases.

4. Another, and equally cogent, argument against the theory is the consideration that it is well established law that these courtfees are payable upon the grant of probate and not upon the application for probate (*cf.*, I. L. R. 52, Bombay 61). So fully is this recognised, that the rules of the various High Courts are drawn in such a way as to make it possible, in contested cases, for a *caveat* to be entered before the application for probate is made, with the result that the payment of courtfees is postponed until the dispute has been settled. When that stage has been reached, the "courtfee" is payable not by the loser, but by the winner. These facts create a position entirely different from the position of genuine "litigative" courtfees as in suits : a suit cannot be heard until the courtfee has been paid by the plaintiff; if the plaintiff loses he gets no relief in respect of the courtfee; if he wins, the defendant is usually ordered to pay costs which include this amount.

5. These reasons appear to establish conclusively the fact that the whole of these courtfees constitute, in principle, a tax on succession rather than payment for services rendered, so that there is no valid reason for not allowing them in full as a deduction from any death duties payable on the same estate.

APPENDIX II.

Effect that an exemption limit equal to Rs. 25,000 (£1,875) would have had on the operation of the Estate Duty in Great Britain in the year 1935-36.

The dividing lines in the tables contained in the Report of the Commissioners of His Majesty's Inland Revenue are at £1,000 and £5,000. The relevant figures, converted into percentages of the totals, are :—

	Estates not exceeding £1,000.	Exceeding £ 1,000, not exceeding £5,000.
	%	%
Number of estates . . .	61·6	24·9
Net capital values . . .	7·0	14·8
Net duty receipt. . . .	·7	3·2

It may be conjectured that the figures in the second column include, approximately, the following shares attributable to estates between £1,000 and £1,875, *viz.*—8.4, 3·0, and ·6 per cent, respectively, giving totals for estates up to £1,875 of 70, 10 and 1.3 per cent, respectively.

APPENDIX III.

Statistics of the yield of courtfees on probates, etc., are very incomplete. The following figures are taken from the Civil Justice Administration Reports issued by High Courts, where they are shown as covering "duty on probates", though it seems probable that they also cover letters of administration, if not succession certificates :—

Bombay.

	Bombay High Court.	Other Courts.
	Rs.	
1934	7,67,197	(Not shown.)
1935	6,86,157	
1936	14,13,946	

Bengal.

	Calcutta High Court.	Other Courts.
	Rs.	Rs.
1934	10,51,935	2,50,117
1935	9,15,377	1,61,283
1936	23,52,525	3,27,914
1937	12,90,728	3,21,575

(*N.B.*—The High Court figure for 1929, was over Rs. 70 lakhs, owing mainly to the probate of the Yule Estate).

Bihar.

	Patna High Court.	Other Courts.
	Rs.	
1937	60,974	(Not shown).

2. There is no means of telling what proportion of the above figures represents estates of less value than Rs. 25,000 each, or agricultural land included in estates.

APPENDIX IV.

Suggested adaptation of section 1 of the United Kingdom Finance Act, 1894 :—

"In the case of every person dying after the commencement of this Act, there shall, save as hereinafter expressly provided, be levied and paid, upon the principal value ascertained as hereinafter provided, of all property, movable or immovable, settled or not settled, not being agricultural land, which passes on the death of such person a duty, called "Estate duty", at the graduated rates hereinafter mentioned."

2. Suggested adaptation of section 2(1) of the same Act :—

"Property passing on the death of the deceased shall be deemed to include the property following, not being agricultural land, that is to say :—

(*a*) Property of which the deceased was at the time of his death competent to dispose ;

(*b*) Property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest ; but exclusive of property the interest in which of the deceased or other person was only an interest as holder of an office, or recipient of the benefits of a charity or as a corporation sole ;

(*c*) Movable property of the following descriptions, *viz.* :—

(*i*) Any property taken as a gift made by the deceased in contemplation of death ;

(*ii*) Any property taken under a voluntary disposition made by the deceased, purporting to operate as an immediate gift *inter vivos* whether by way of transfer, delivery, declaration of trust or otherwise, which shall not have been *bona fide* made, if the gift is to a charity, twelve months or in any other case, three years before the death of the deceased ;

(*iii*) Any property which the deceased, having been absolutely entitled thereto, has voluntarily caused or may voluntarily cause to be transferred to or vested in himself and any other person jointly whether by disposition or otherwise, so that the beneficial interest therein or in some part thereof passes or accrues by survivorship on his death to such other person ;

(*iv*) Any property passing under any past or future voluntary settlement made by the deceased by deed or any other instrument not taking effect as a will, whereby an interests in such property for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor, or whereby the settlor may have reserved to himself the right, by the exercise of any power, to restore to himself, or to reclaim the absolute interest in such property.

Explanation.—A disponer is deemed to reserve an interest for himself when he has reserved one for the maintenance of his family, or of himself and his family, with himself as *mutwali* or manager.

(*d*) Any annuity or other interest purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased.

Explanation.—Where an annuity or other interest has been purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person, the extent of any beneficial interest therein accruing or arising by survivorship or otherwise on the death of the deceased shall be ascertained, and shall be deemed always to have been ascertainable, without regard to any interest in expectancy the beneficiary may have had therein before the death. (Finance Act, 1934, section 28).

3. Suggested adaptation of same Act, section 2(2), regarding taxation of property situate abroad :—

"Property passing on the death of the deceased when situate out of British India shall, if immovable, not be included, and, if movable, be included only if the deceased was, at the time of his death, ordinarily resident in British India :

Provided that no such movable property shall be included if it passes under or by reason of a disposition made by a person who, at the date on which the disposition took effect, was not ordinarily resident in British India, unless the disposition was made, directly or indirectly, on behalf of or at the expense of or out of funds provided by a person who at that date was ordinarily resident in British India. (*cf.*, Finance Act, 1936, section 24).

Definition.—For the purpose of this Act, a person shall be deemed to have been ordinarily resident at any date, if he had been ordinarily resident in British India, within the meaning of the Indian Income-tax Act, 1922, in the financial year immediately preceding that in which that date occurs."

ANNEXURE I.

MEMORANDUM.

INHERITANCE TAXES IN INDIA.

Introduction.

Scope of subject.—This memorandum deals with the levy of inheritance taxes in India in respect of property of any kind other than agricultural land. The expression "inheritance taxes" will be used to cover all taxes levied on the occasion of the passing of property (*a*) on the death of the owner or (*b*) on transfer by the owner (otherwise than for adequate consideration) within a short time before his death. The expression, therefore, as here used, would cover a variety of taxes that are levied in other countries, *e.g.*, in England, Estate Duty, Legacy Duty and Succession Duty. In British India all we have, so far, is the recovery in certain cases of "fees", under the Court Fees Act, 1870, and cognate laws, relating to probates, letters or certificates of administration and succession certificates.

2. *The Taxation Enquiry Committee's Report.*—It will be assumed that the readers of this memorandum have access to the Report of the Indian Taxation Enquiry Committee, in which the subject was discussed (with reference to the then prevailing constitutional position) in Chapter XII, "Probate Duties" (Vol. I) and in Appendix X, Vol. II. For ready reference, however, a copy of the Summary of the Committee's conclusions on this point is subjoined :—

"*Probate Duties.*

(143) A Succession Duty is impracticable in India, but a duty on the lines of the English Estate Duty, which may initially take the form of a transfer or mutation duty on death, is more practicable (S. 357).

(144) This involves representation of the deceased, which is desirable on other grounds (S. 358).

(145) The existing law provides for it in certain cases, but is limited to particular communities (S. 359).

(146) The taxation that it involves is very inequitable in its incidence (S. 361).

(147) The Committee recommend its modification and extension to all communities and discuss the means of effecting this (Secs. 366 and 367).

(148) They do not find the law of the joint Hindu family an insuperable obstacle (S. 369).

(149) The legislation dealing with the question should be undertaken by the Central Legislature (S. 382)."

3. *Memorandum confined to Indian problems.*—It is not proposed in this memorandum to enter into any discussion of the merits or demerits of this form of taxation as a general proposition. Attention will rather be directed to the peculiar problems that attend its adoption in this country.

4. The Government of India Act, 1935, contains the following provisions :—

Government of India Act, 1935—

Section 137 : "Duties in respect of succession to property other than agricultural land....................shall be levied and collected by the Federation, but the net proceeds in any financial year of any such duty or tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces, shall not form part of the revenues of the Federation, but shall be assigned* to the Provinces and to the Federated States, if any, within which that duty or tax is leviable in that year, and shall be distributed among the Provinces and those States in accordance with such principles of distribution as may be formulated by Act of the Federal Legislature :

* For definition of "net proceeds" and directions as to method of "assignment" see Section 144.

Provided that the Federal Legislature may at any time increase any of the said duties or taxes by a surcharge for Federal purposes and the whole proceeds of any such surcharge shall form part of the revenues of the Federation."

7th Schedule, List I: "56. Duties in respect of succession to property other than agricultural land."

7th Schedule, List II: "43. Duties in respect of succession to agricultural land."

5. The following sections state certain problems in connection with which the legal and other conditions that exist in British India have to be given special consideration. The subjects of these sections are :—

I. Existing Probate Duties (Court-fees).

II. Laws of Inheritance in India : Representation.

III. Agricultural Land.

IV. Form of Tax to be adopted.

V. Scope of Tax.

VI. Yield.

VII. Machinery for Collection.

VIII. Dual Taxation.

IX. Distribution of Proceeds.

Section I.

Existing Probate Duties (Court-fees).

Existing Law.—The only existing charge in India which has anything of the character of an inheritance tax consists of the court-fees chargeable under Articles 11 and 12 of Schedule I to the Court Fees Act, 1870, on probate and letters of administration and on succession certificates.

There is here no distinction between agricultural land and other property. The court-fee under Article 11 is 2 per cent., 2½ per cent. or 3 per cent. according to the value of the property, with an exemption limit of Rs. 1,000. This exemption has been raised to Rs. 2,000 in Bengal and Bihar. In Bombay, Bengal and Bihar the level of the fees on the higher values has been raised, with a maximum rate in Bombay and Bengal of 7 per cent. (applied on the slab system). This is quite a substantial burden; in the case of estates with a value of less than a lakh, it is of the same order as the *combined* effect of Estate Duty and Succession Duty in England in those cases where the lowest rate of Succession Duty is recovered because the legatees are very near relatives.

2. *Constitutional position.*—There is some doubt as to the constitutional position of these court-fees. Are they taxes or not? The Legal Adviser to the Taxation Enquiry Committee (Vol. II, page 168) expressed the opinion that these receipts did not constitute fees for services rendered, but were really taxes on succession, and that it was only an accident that courts of law constituted the present machinery for their collection. He added that for a service rendered by the court in connection with those proceedings, it took a separate fee on the application under Schedule II, Article 1 of the Court Fees Act. If this is true, it may well be that the continued existence of these court-fees on a provincial basis is only saved (except for agricultural land) by sub-section (2) of section 143 of the Government of India Act, and it is probable that they cannot be enhanced or their scope enlarged on that basis. It would also be permissible for the Central Legislature to remove these Articles from the Court Fees Act, except perhaps to the extent that they may genuinely possess the character of a fee for services rendered. The present fees go much further than that; a charge of 7 per cent. on the value of a millionaire's estate is out.

of all proportion to any specific service rendered. On the other hand, it has been suggested that a decision that these court-fees were not fees for services rendered would not throw them into the category of a tax or duty. The argument is that "fees taken in court" are specifically mentioned in Entry 1 of List II and specifically excluded from Entry 54 relating to fees, which suggests that court-fees have some attribute not common to "fees" and should not necessarily be restricted to the cost of running the courts. It is, however, perhaps unnecessary to pursue the examination of this constitutional nicety, since it is generally recognised that there is a practical consideration, namely, the limited application of these court-fees, which makes them unsuitable for further development, in their present form, as a source of provincial revenue.

3. *Insufficiency of present law.*—Of this limited application the Taxation Enquiry Committee said (Vol. I, paragraph 361, page 281): "The existing duties are very inequitable in their incidence. This is determined by race, religion or locality. The assets in India of Europeans, Eurasians, Armenians, Jews and persons of foreign domicile must pay duty whether there is a will or not, or whether any right is sought to be established in court or not. The estates of Parsis, whether there is a will or not, and the estates of Indian Christians, where there is a will, must pay duty wherever the estate be situated in India, though only when a right is sought to be established in the courts. The estates of Hindus, where there is a will made in, or relating to, immovable property situated in the Lower Provinces of Bengal or the cities of Bombay or Madras, must also pay duty, but again only when a right is sought to be established in the courts. The estates of all Muhammadans who die testate or intestate, the estates of all Hindus and Indian Christians who die intestate, and the estates of all Hindus who die leaving wills not falling within the scope of the Hindu Wills Act need pay no duty, unless the parties themselves apply for and obtain probate or letters of administration." Members of the communities that do not escape this charge have protested somewhat bitterly against what they regard as an unfair discrimination against them, and it is difficult to see what answer can be given to such protests. But considerations of equity apart, a revenue officer must take the view that the exclusion of many members of the two largest communities in India from the incidence of a tax makes it an unsuitable one for further exploitation. If a tax is to be worth developing it must be one that throws its net as widely as possible.

4. *Conclusion.*—The conclusion is that what we have now to seek is some new form of tax, bearing more resemblance to the English Estate Duty or Succession Duty than to the existing court-fees. If such a tax comes, what is to happen to the existing court-fees? The special communities affected could not in justice be asked to pay such court-fees in addition to the new tax. The court-fees might be repealed (except as regards agricultural land or to the limited extent that they are a fair payment for services rendered) but, as has been indicated, there is room for some doubt as to the Legislature which is competent to do this. The alternative is to retain them, but to allow their amount (except any proportion which is attributable to agricultural land) as a deduction from the amount of the new tax that is to be collected in respect of the same property. The question of taking the amounts so allowed into consideration when distributing the proceeds of the new tax between the provinces will be discussed in the section of this memorandum which deals with the subject of such distribution.

Section II.

Laws of Inheritance in India: Representation.

General.

Differences in Inheritance Laws.—The note prepared by the Legal Adviser to the Taxation Enquiry Committee, in paragraphs 33 to 41 (Vol. II, pages 210-214) contains a valuable account of the varying systems of inheritance in India. The next succeeding portion of his note, paragraphs 42 to 54 (Vol. II, pages 214 to 219), shows to what extent the operation of these systems involves regular representation. With these accounts on record, it is unnecessary to do

more here than remind the reader of the broad outlines of the picture as exhibited in the passage from the Committee's report quoted in paragraph 3 of Section I of this Memorandum. The consequent discrimination in the incidence of court-fees has been referred to in the same section; and it now remains to discuss the action to be taken if, on revenue grounds as well as on grounds of equity, this discrimination is to be removed. A choice must be made between two courses :—

(1) Making representation compulsory for all successions, including intestate successions; and

(2) Devising means to levy Death Duties in cases where there is no representation.

2. *Compulsory representation* : *Taxation Enquiry Committee's proposal.*—The Taxation Enquiry Committee recommended compulsory representation. It appears to have been their idea that this should be the prelude to the levy of inheritance tax in the form of court-fees. That plan cannot now be supported, both because of a constitutional difficulty, mentioned in Section I of this Memorandum, and for reasons of practical administrative convenience stated in Section VII. But, as explained in the last quoted passage, compulsory universal representation would be equally valuable as an instrument for the recovery of an inheritance tax, on the English model, which is not collected in the form of court-fees. The first step in the recovery of the English duties by the Revenue officers is the receipt by them of a copy of the "Inland Revenue affidavit" filed with the application for probate. It is hardly possible to exaggerate the value of this process.

3. *Objections to that proposal.*—The Taxation Enquiry Committee accompanied their recommendation with the remark that its adoption would be very advantageous on other grounds (Vol. I, paragraphs 363 and 364). In doing so, they referred to the opinions expressed by the Civil Justice Committee; these will be found in Chapter 38 of that Committee's Report. The whole question of compulsory representation, whether the succession is testate or intestate, was discussed at length between the Local Governments and the Government of India when that Report came to be considered. The conclusion reached was, briefly, that there was little hope that any proposal for requiring probate of wills to be taken out in all cases would be accepted by the communities at present excluded from the operation of the Indian Succession Act. Serious opposition was anticipated on the ground that such interference with the enjoyment by members of those communities of property to which they had succeeded by or under their personal law was objectionable on religious grounds. This would probably be felt by all in the case of intestacy : it would also be felt by Muhammadans in respect of property passing by will. The probable attitude of members of that community was well explained by the judges of the Patna High Court in their opinion on the Bill which became the Indian Succession (Amendment) Act in the following words :—

> "To apply the Hindu Wills Act to Muhammadans would have the effect of making drastic alterations in the Muhammadan law relating to wills as sanctioned by the Koran. At present under Muhammadan law nuncupative wills are permissible and even in written wills the formalities required are much less stringent than in the Hindu Wills Act. Even the absence of the testator's signature does not invalidate the will. The test of testamentary capacity is also quite different from that in the case of Hindu and English wills. The powers of disposal of property are also more restricted. As the question is one connected with their religion the Muhammadan community would probably oppose any legislation in conflict with their religious sentiments. Apart from this there appears to us to be no objection to apply the Hindu Wills Act to Muhammadans but this can probably only be done if the Muhammadan community are in favour of such a change."

If the Muhammadan community are not in favour of such a change and their opinion is respected, then we cannot in justice adopt a plan which would make the grant of probate essential to the collection of Death Duty and which would therefore exclude from the scope of the tax the whole of such an important community.

4. *Alternative proposal.*—The advantage for our purpose of compulsory representation is that it would automatically supply the assessing officer with (*a*) a report of the death of the owner of a taxable estate and (*b*) a detailed declaration of the value of such estate; after that stage, ordinary revenue processes will be feasible. If that advantage cannot be secured automatically without offence to religious susceptibilities, we shall have to devise an alternative way of securing such reports and declarations, and the following suggestions are made :—

(*a*) *Report of death.*—It would be necessary to impose on the successors to a taxable estate the duty of reporting the death within a specified time. This liability would lie on each and all of the successors and also on the executor or administrator (if any). Except in cases where probate or administration was applied for, this report should also show the names of all the successors, so far as known to the person reporting the death.

The sanction to be applied in the case of non-compliance with this obligation would be the levy of tax on the whole estate at a penal rate. This proposal is not so draconic as might appear at first sight. Although the obligation to report the death would fall on all the successors, the penal rate would not be enforceable if any of them had properly complied with the requirement. There might also be ancillary provisions requiring (1) the Courts to report all applications made for grant of probate, etc., (2) Income-tax officers to report all deaths reported to them of persons on their books as past or present assessees, and (3) District Officers to report all deaths brought to their notice of persons not liable to income-tax but believed to have died possessed of substantial property other than agricultural land; and the levy of a penal rate for failure to report the death to the Inheritance-tax officer would be excluded where it could be shown that application had been made to the Courts or a report made to the Income-tax officer or the District Officer (as the case might be) within the limit of time prescribed for the presentation of a report to the Inheritance-tax officer.

(*b*) *Declaration of value of estate.*—On receipt of a report of the death, as above, or of information of it from any other source, the assessing officer would call for a return (unless such was already furnished along with the report of death) and normal revenue processes would follow. The assessing officer would have a discretion (subject to such limitations as the Legislature might impose) to determine which of the parties should be called upon to submit a return. He would be authorised, if he thought fit, to make the demand upon the guardian of a minor successor, and also on one or more successors in the alternative.

The sanction for failure to submit the return might have to differ from that for failure to report death: in the latter case, the obligation was (it has been suggested) on all the successors and it would therefore be appropriate to punish non-compliance by a penal rate applicable to the whole estate; in the other case, the suitable punishment would be one which fell only upon the individual who had failed to make a return when called upon. Incidentally, this would ensure that the assessing officer would select as responsible a person as possible to be the one from whom he would call for a return.

5. *Ancillary measures.*—The Taxation Enquiry Committee (Vol. I, paragraph 367) made certain suggestions for enforcing representation. The first two of these might be adapted to the alternative scheme in the following modified form :—

(*i*) Provisions corresponding to sections 212 and 213, Indian Succession Act, 1925, non-suiting claimants in civil courts if they failed to produce a certificate that the death had been duly reported to the Inheritance-tax officer and (if a certain length of time had elapsed) that the duty had been paid or that delay in payment of the duty was not due to circumstances under their control; (a person so non-suited would be allowed to return to the court after he had cured his laches);

(*ii*) Registration of transfer of house-property, shares, etc., from the name of a dead person could be prohibited unless a similar certificate was produced. (It may be remarked that the exclusion of agricultural land removes some of the practical objections formerly taken to the second proposal.)

The third suggestion of the Committee, viz., penalising interference with an estate if the duty were not paid within six months, might be objected to by some as a tampering with the customary law of inheritance; and the fourth one, (referring to the Administrator-General), is certainly open to that objection, since it is hardly distinguishable from compulsory representation.

6. *Hindu Undivided Families*: *The Problem.*—A great problem is raised by the Mitakshara law relating to joint families. So far as the deceased person had his own separate property, whether self-acquired or obtained by partition, there is no great difficulty: and the Income-tax authorities will generally have their own information as to such property, since it is usual to put in and substantiate a claim for separate assessment of such property. It may be remarked, in passing, that the exclusion of agricultural land from the scope of the tax will probably do much, in practice, to secure that such information from the Income-tax officers will affect important parts of the whole taxable property the ownership of which is affected by the death. The gravamen of the problem lies in dealing with the property that remains fully undivided, and may be briefly, if crudely, stated as lying in the fact that the Hindu undivided family may be said never to die until the death of its last member, but that if taxation to death duties were left till the death of the last member, a very important section of the wealth of the country would escape almost entirely a burden that fell on all other communities. The position is fully described in paragraphs 72 to 85 of the note of the Legal Adviser to the Taxation Enquiry Committee (Vol. II, pages 226 to 230) and need not be further elaborated here.

7. *Proposal.*—To meet these difficulties, the Legal Adviser made certain concrete suggestions which will be found in paragraphs 94 to 102 of his note (Vol. II, pages 234-236). His main proposal was that the share of the deceased would be taxed as though partition had taken place just before his death, with an exemption in cases in which a co-parcener, who is a minor as defined in the Indian Majority Act, dies during the lifetime of his father and another lineal male ascendant, who is joint with him. The Committee supported these proposals (Vol. I, paragraphs 373-376, pages 288-290). It is for discussion now whether they should be adopted as they stand or in a modified form.

It may be suggested that it would be equitable to aggregate the value of the deceased's separate property (whether self-acquired or taken by partition) with his share in the undivided property for the purpose of determining the rate.

8. *An objection answered.*—Any suggestion that this plan, owing to the subdivision of interests in the family property between all members, would lead to a quicker "turn-over" than is usual with some other communities can be answered by the consideration that the very same factor would reduce the rate of duty applicable (if on a graded scale) and increase the proportion of estates falling within the exemption limit.

Section III.

Agricultural Land.

Questions of Interpretation.--Agricultural land is excluded from the scope of the legislation under examination. Three questions arise at the outset :—

(1) What is the territorial scope of the expression?

(2) To what rights in respect of such land must the succession relate in order to bring the exclusion into force?

(3) What land, in a physical sense, is to be called "agricultural"?

2. *Territorial Scope.*—The question is whether the meaning of the expression "agricultural land" as used in the Government of India Act, 1935, is so limited as to confine it to agricultural land situated in a Province. The answer to this is probably in the affirmative. Entry 56 of List I must be read with Entry 43 of List II. The latter entry obviously refers to "agricultural land" in the province imposing the duties, for were it not so one province could impose duties on agricultural land in another province, which is inconceivable. It is only necessary to refer to Entry 21 of List II to see that the general

scheme is to leave all matters connected with land to the legislative jurisdiction of the province in which it is situated.

The question, however, is of no mòre than academic interest, since it is generally recognised that inheritance taxes are not properly recoverable on *immovable* property situated outside the taxing country and devólving as such. For the English law on the subject, see Finance Act, 1894, section 2 (*2*) read with Finance Act, 1936, section 24, proviso. Those references relate to Estate Duty. As regards Succession Duty, the same result flows from the principle of British law that the title to immovable property is governed by the law of the place where the property is situated. Attention may also be drawn to the fact that the Bombay Succession Duty Bill of 1931 (which was dropped) proposed to tax residents of the Presidency on their succession to movable property wherever situate but to immovable property only within the Presidency.

3. *Rights in land.*—As regards the second question, the analogy between the exclusion of "agricultural land" from centrally imposed inheritance tax and of "agricultural income" from income-tax is only superficial and some difficulties which arise in connection with income-tax will not arise here. Land means land, and can hardly include any such remote rights in land as are conferred by possession of a share in a company owning land. Even the share of a partner in a firm which owns immovable property is itself, in English law, personal and movable property, though not the share of a co-owner. Again, a mortgagee's rights do not contain a true proprietary element and are not, therefore, excluded, with the possible exception of rights under a possessory mortage. This principle was recognised in the Bombay Succession Duty Bill of 1931, which (though not under a cònstitutional obligation) contained a concession in respect of agricultural land but expressly provided that the concession should not be applied to the interest of a mortgagee in agricultural land.

4. But the exceedingly complicated land tenure systems of India produce certain problems that are much more difficult to answer. There are, indeed, definitions of "agricultural land" in existing legislation and a Court would be bound to take such usages or laws into consideration, though the existence of a definition (in a law with quite a different purpose) which departed altogether from the natural significance of the expression could not be conclusive in considering what is or is not *intra vires* of the Federal or Provincial Legislature.

5. *Example I : Land tenure in United Provinces.*—In the United Provinces, for example, we find in the Regulation of Sales Act, 1934, a definition of "agricultural land" which contains the words "shall include any interest in such land or in any mahal.........or share in a mahal". The expression "any interest in such land" is for cur present purpose undesirably wide and it is interesting to contrast the definition of land in the United Provinces Encumbered Estates Act 1934, which reads :—"land means a share of or interest in a mahal in the United Provinces, but does not include the interest of a mortgagee or thekadar or an assignment of land revenue unless it is transferable and perpetual". This seems to be more consistent with the British conception of beneficial ownership. The word "mahal" contained in the first of the above extracts is defined in section 4 (*4*) of the North-Western Provinces and Oudh Land Revenue Act, 1901, the principal words being "any local area held under a separate engagement for payment of the land revenue". It would appear that a share in a mahal involves that proprietary element which has been postulated, its holder being in the position of the British "co-owner" referred to in paragraph 3 above.

6. *Example II : Land tenure in Central Provinces.*—Again, in the Central Provinces (as opposed to Berar, where the *raiyatwari* system prevails) there is a peculiar system of land tenure, which may be briefly described as one which divides the full proprietary rights between the landowner or *malguzar*, and the tenant, who has inalienable and hereditable tenancy rights. In a universal system of death-duties, each of these rights ought to be taxable; and the reasons which relegated "succession to agricultural land" to Provincial legislation must surely operate to make it undesirable to assign succession to the landowner's proprietary rights to Provincial legislation and succession to

tenancy rights to Central legislation, if it should be ruled by the Courts that succession to any such tenancy rights is not succession to the land.

7. *Possible exclusions from Central Legislation.*—With these examples before us, it is suggested that any Act imposing an inheritance tax under section 137. Government of India Act, should contain a definition of agricultural land which would exclude from the Centrally imposed tax certain classes of rights in agricultural land that may arguably be described as not being full proprietary rights. But we must avoid the danger lest by doing so we exclude from the Central tax something that the Courts may hold is excluded by the very wording of item 43 in List II, Seventh Schedule, from the scope of Provincial legislation, so that it will escape taxation altogether in a province that has introduced its own duties in respect of succession to agricultural land. Fortunately the fact that the Central tax is to be collected for the benefit of the provinces offers an easy way of avoiding this result : the Central Act could contain a clause in general terms to the effect that any rights in agricultural land which are specifically excluded from its scope and which at the same time are outside the scope of item 43 in List II, shall be liable to the Central tax at the same rate as that, if any, to which it would be liable in the province in which the land concerned is situated, if it were agricultural land of the same value, such Central tax to be collected by the agency of the province in which the land is situated under section 124 (*2*) of the Government of India Act and its proceeds to be assigned in full to the same province. Aggregation of such classes of property with what is indisputably agricultural land could be provided for in the relevant Provincial Act.

The alternative would be to leave it to the Courts to determine as each case arises the precise dividing line between the relevant entries in the Federal and the Provincial Legislative lists. That course is open to the objection that it forces avoidable litigation upon the public.

8. *Nature of Agricultural land.*—As regards the third question, it will at once be recognised that the question whether land is agricultural land is a question of fact. The definition of agricultural income in the Indian Income-tax Act, with its reference to land revenue, is not directly relevant : under that definition the land from which the income is derived must be both agricultural in fact and also assessed to land revenue or local rate; if the latter condition is absent, Central income-tax is leviable on the income from the land, even though it is in fact agricultural land. On the other hand, the payment of land revenue cannot convert non-agricultural land into agricultural land though, in some provinces at least, land revenue is payable on non-agricultural land, as pointed out by the Taxation Enquiry Committee in paragraph 111 of their Report. But certain points will arise even in the determination of the question of fact. *Firstly*, what is the scope of the word "agricultural"? Here it will probably be thought reasonable to read it as covering all such land as is referred to in the definition of "agricultural land" contained in section 2 (*2*) of the United Provinces Regulation of Sales Act, 1934, which refers to land "let or held for agricultural purposes or as grove land or for pasturage". On the other hand, an ordinary garden or orchard attached to a dwelling house should be excluded. *Secondly*, what buildings, if any, located on agricultural land should be taken with the land? It would here be appropriate to follow the practice embodied in the proviso to section 2 (*1*) of the Indian Income-tax Act (which includes with the land farms and farm-buildings but not presumably a wealthy zemindar's mansion). *Thirdly*, should standing timber, standing crops or other ungathered produce of the land be taken with the land? In spite of the exclusion of these in certain circumstances from the United Provinces definition just referred to, it would seem reasonable to group them with the land for the purpose of an inheritance tax. *Fourthly*, what treatment should be accorded to land which has gone out of cultivation? Presumably this will be treated as agricultural land unless and until it is put with some continuity to some use other than an agricultural purpose.

9. *Conclusion.*—It is perhaps desirable, in order to forestall litigation, to deal with as many of these points as can be foreseen by specific provisions in the proposed Central Act. Any danger that such provisions may leave any particular item outside the scope both of the Central tax and of the Provincial tax, if any, could be avoided by the adoption of the device described in paragraph 7 above.

Section IV.

FORM OF TAX TO BE ADOPTED.

Two main forms of Inheritance Tax.—As the Taxation Enquiry Committee pointed out in paragraph 356 of their Report, inheritance taxes fall into two main classes :—

(1) Transfer or Mutation duty, which is payable by reason of the passing of property on death, and

(2) Acquisition or Succession Duty, which is levied by reason of the acquisition by a beneficiary of assets belonging to a deceased person.

The former is a capital tax levied on the aggregate capital passing on death irrespective of its distribution; the latter is a capital tax levied on the capital as distributed and constituting a direct tax on the amount actually received by each beneficiary. The British Estate Duty is an example of the first category, the Legacy and Succession Duties examples of the second category. In the British system of taxation, Estate Duty is much more important than Legacy or Succession Duty, since it yields nearly 90 per cent. of the total net receipts under Death Duties.

The only levy now existing in India, court-fees on probate or letters of administration, falls in the category of transfer or mutation duties.

2. *Advantages of Estate Duty.*—As a general proposition, it is now recognised that in any country the Estate Duty form has a great advantage in simplicity since (*a*) only one calculation is involved for each occasion on which property passes through death, and (*b*) there are no complications caused by life estates, remainders and contingencies. The first of these advantages acquires particular weight in Indian conditions, as the Taxation Enquiry Committee pointed out in paragraph 357 of their Report, from which the following words are quoted :—"The systems of inheritance both among the Hindus and among the Muhammadans recognise a plurality of heirs, and the calculations connected with the division of property among them, and more particularly the minute fractions into which the shares of particular heirs may run, would render the imposition of a Succession Duty, as distinguished from an Estate Duty, impracticable." A revenue officer's attempts to determine the shares of particular heirs might conflict seriously with the final decisions of the civil courts in those instances, which intestacy makes inevitable, in which the heirs dispute among themselves. Such an attempt would, however, have to be made since, in the last resort, Succession Duty is a charge on each particular legacy, share of residue, etc., and is in law payable by each successor (even though in England it is in practice usually paid on behalf of the successors by the executors or trustees). As for the second point, it may be said that Estate Duty looks at the passing of property from the hands of the deceased while a true Succession Duty looks at its actual arrival in the hands of the successors, which owing to the operation of settlements, etc., may be deferred for a very long period. This is an inconvenience which India would share with other countries; but it seems clear that in India such delay in disposing of the taxation consequent upon a particular death must (in the case of those communities which remain outside the scope of the Indian Succession Act) provide exceptional opportunities for evasion of the tax which an immediate settlement under Estate Duty would avoid. The Committee mentioned another difficulty peculiar to India which would stand in the way of any attempt to make actual succession the condition of taxation, namely, the joint family system under Mitakshara law, in which there cannot be more than a notional succession. To this, however, it might be answered that this is equally applicable to an Estate Duty, since there can only be a notional, not an actual, passing of any share in the family property from the hands of a deceased member of such a family.

3. *Gradation of tax by relationship.*—Another feature of Succession Duty in England which distinguishes it from Estate Duty, is that the former is graded according to the degree of the successor's relationship with the deceased; from 1 per cent. in the case of bequests to spouse or lineal issue or ancestor to 10 per cent. in the case of remote collaterals and strangers in blood

(including charities). This is perhaps not an inherent and indispensable distinction. If, however, it is suggested that it reflects a desirable principle and that therefore we should select the Succession Duty form, which alone can be used so as to put that principle into practice, the answer seems to be that conditions in India are such as in practice to make the value of that principle almost illusory. Succession by the nearest relatives is so prevalent, especially under the personal law of the majority communities, that, with any differentiation of rates on the lines of the English Legacy and Succession Duties, the lowest scale of rates would have to be regarded as normal and the higher scales as imposing an extra tax on the remote relative or stranger in blood; while the very same cause would serve to make the yield of such extra tax so small as to render it not worthwhile collecting it at the price of introducing grave complications into the machinery of administration. Thus the selection of a Succession Duty rather than an Estate Duty offers no solid advantage to set off against very real objections to which such a course is open.

4. *Objection to combination of both forms.*—The above remarks deal with the selection of one or other form of tax as the only one to be levied. The objections to a Succession Duty will have precisely the same force if it is levied in addition to Estate Duty as if it is the only tax, while it will probably be agreed that it is desirable to avoid unnecessary complications on the first introduction of a new form of taxation. The English combination of the two types is therefore hardly a model to be followed.

Section V.

Scope of the Tax.

(i) *Territorial scope.*

Property situated outside British India.—An Indian inheritance tax could, of course, readily be made to apply to all property other than agricultural land situated in British India. What is to be considered is the case of property situated outside British India.

In an earlier Section it has been suggested that the reference to "agricultural land" in Entry 43 in Legislative List II must be confined to such land situate in the legislating Province and that in consequence the same limited sense must be given to it in Entry 56 in List I and in section 137, Government of India Act. No such considerations affect the interpretation of the whole expression "property other than agricultural land" used in the last two references and there is no reason to apprehend that law passed by the Indian Legislature which brought movable property situated outside British India under taxation would be bad on the ground of extra-territorial jurisdiction, except any such provisions as purported to make the tax recoverable otherwise than by processes capable of enforcement in British India. The case of *immovable* property is different, as has already been remarked in paragraph 2 of Section III of this Memorandum. The English law excludes immovable property situated abroad from the scope of any English Death Duty, regardless of the domicile or residence of the owner, on the principle that succession to immovable property is governed by the law of the place where the property is situated. That principle is also embodied in the British Indian Law of Succession. The question we have to answer is: "In what circumstances can *movable* property situated outside British India be brought under taxation?"

2. *The British model.*—The British law applies Estate Duty to movable property abroad if the deceased died domiciled in Great Britain but not if he died domiciled abroad; it applies Succession Duty to movable property abroad if the successor becomes entitled by virtue of the laws of Great Britain and, in practice, this is another way of saying that the domicile of the deceased is the governing consideration. The position under Australian law is similar. If we were to take the British or Australian law as our model (and from the administrative point of view there is much to be said for doing so, since we shall not be raising problems for which practical experience elsewhere will not help us to find a solution) we should simply lay it down that the new inheritance tax applied (1) to all property situated in British India and (2) to all

movable property situated outside British India and included in the estate of a person who died domiciled in British India. Movable property of a person dying domiciled outside British India would be taxable only if situated in British India. This plan would retain the existing position under the relevant entries in the Court Fees Act, so far as property situated in British India is concerned, but it would add a new liability in respect of the movable property situated outside British India of persons dying domiciled in British India.

3. *Meaning of "situation".*—It may be convenient here to recapitulate the meaning in the English law of the expression "situated in" with reference to movable property—

(1) House property, chattels, etc., have an obvious physical situation.

(2) Registered or inscribed stocks and shares are situated in the country where the register, on which they are transferable, is properly kept.

(3) Bearer securities are situate where the document happens to be, irrespective of the place of their issue.

(4) Specialty debts are situate where the instrument happens to be.

(5) Simple contract debts are situate where the debtor resides and where the debt can consequently be recovered. If a debtor company has "residence" in different countries, one must look at the terms of the contract to ascertain where the debt is primarily or properly recoverable. Money in a bank is an asset situate at the branch actually concerned.

N.B.—Category (4) does not exist in British India, where the law recognises no division of debts between "specialty" and "simple" debts. An Indian inheritance tax law, therefore, would put all debts, including insurance policies and mortgages, under category (5).

4. *Inclusion of property outside British India of non-domiciled residents.*—The Taxation Enquiry Committee recommended that as regards the taxation of property outside British India the English model should be followed, *i.e.*, liability should depend on domicile. One member, however, wished to bring in also the property abroad of any person who had been employed and ordinarily resident in British India for two years before death. It is to be supposed that he meant the word "employed", to be read, not in a narrow sense, but as covering all kinds of work for gain in British India. This member's proposal would thus enable us to include in the scope of the tax property situated outside British India of Government servants and other salary-earners of non-British Indian domicile and also of all businessmen of such domicile regularly engaged in British India in the pursuit of their businesses. A large number of Indian State subjects (especially Marwaris) would be affected. It is for consideration whether the advantages of such a measure justify its adoption in the face of the practical difficulties involved in the discovery and valuation of the property abroad of such persons. These must be much greater with the non-domiciled than with the domiciled; in the vast majority of cases, the heirs of a domiciled person will not be able for all time to keep dark the fact of their having inherited property abroad, but the heirs of a non-domiciled resident will rarely be exposed to the risk of a belated detection of an evasion of liability to tax on such property at the time of his death.

(ii) *Taxable rights and interests.*

5. *Tax not limited to actual transfer of title or possession.*—Any inheritance tax, if it is to be equitable in its incidence and if its yield to the revenue is not to be seriously impaired, must not be confined to the transfer on death of the title to or possession of actual property; it must also cover the transfer on death of certain other rights and the extinction on death of certain liabilities pertaining to property; it must also cover certain transactions to which the word "inheritance" is not literally applicable, notably gifts made a short time before death.

6. *Other taxable interests : British law.*—It will be well, in these connections, to take the fullest advantage of the practical experience of the Revenue authorities in Great Britain. It would be premature at this stage to recite the results, as reflected in the British law, in the greatest detail; it will perhaps be enough by way of illustration to attempt a very brief resumé of the principal items in Estate Duty law.

I. *Cessers of interest.*—Property passing on death is deemed to include—

Finance Act, 1894, section 2(1) (c).

(*a*) property comprised in a settlement or trust created by the deceased, whereby he reserved to himself,

(*i*) any interest for his life, or

(*ii*) power to reclaim the absolute interest in the property;

Ibid, section 2(1) (b).

(*b*) property in which any person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest; and

Ibid, section 2(1) (c).

(*c*) property which the deceased held jointly with another so that the beneficial interest therein, or in some part thereof, passes or accrues by survivorship to the other party.

Ibid, section 7.

Notes (*1*).—As for the valuation of these life interests, it is laid down that where the interest extended to the whole income of the property its value is the principal value of the property; and proportionately for part interests.

(*2*) Provisions (*a*) and (*b*) in principle cover the case of the private Wakfs referred to in paragraph 378 of the Taxation Enquiry Committee's report and could be made to do so literally with small modification, *e.g.*, by a provision that a disponer is deemed to reserve an interest for himself when he has reserved one for the maintenance of his family with himself as *mutwali* or manager.

II. *Continuing annuities.*—Annuities or other interests provided by the deceased are deemed to be property passing on his death to the extent of the beneficial interest accruing or arising by survivorship.

III. *Transfers to Companies.*—These are comprehensively dealt with in sections 34 and 35 of the Finance Act, 1930, which applies to any company that *either*—

(*a*) is so constituted as not to be controlled by its shareholders or any class thereof, *or*

(b) has not issued to the public more than half the shares which carry the control. If the deceased made transfers of property to such a company and received from the company benefits (say, as "salary") exceeding 50 per cent. of the company's income, a sum equal to a corresponding proportion of the company's assets is deemed to pass on his death. There are further provisions in section 35 relating to settled property transferred to a company.

IV. *Dispositions inter vivos.*—Property passing on death is deemed to include—

Finance Act, 1894, section 2(1) (c) and 1910, section 59.

(1) gifts made to take effect only in the event of death;

(2) gifts made less than 3 years before the donor's death;

(3) gifts, made at any time, unless *bona fide* possession and enjoyment was assumed by the donee and retained for 3 years before the death, to the entire exclusion of the deceased; and

(4) surrenders of life interest or annuity within three years of death (Finance Act, 1910, section 11).

7. *Motive irrelevant.*—The framing of these provisions does not necessarily impute any motive to the deceased (although in the case of group III, the avoidance of Death Duty is the obvious motive) and what has to be ascertained is merely the fact of the disposition, settlement, etc., in question.

Section VI.

YIELD.

Difficulty of estimating.—It must be admitted that no estimate of the yield of an entirely new tax can claim any approach to accuracy; and this applies with particular force to a tax such as is now under discussion, because of the entire absence of any indication of the number of estates above whatever exemption limit may be fixed and of the grouping of these for admission into their proper places in a graded scale. Nevertheless, some rough estimate must be attempted if only to enable those concerned to consider whether the yield is likely to be enough to justify the facing of the difficulties which have been described in preceding sections.

2. *Method of approach.*—As a basis for such an attempt, the relation between the valuation of estates for Estate Duty and the assessment of incomes for income-tax in the United Kingdom may be examined. This will enable us to make a rough estimate of what would be the yield of a similar duty in India on the assumptions—

(1) that the Indian rates of inheritance tax would be the same as the British rates of Estate Duty;

(2) that the same principles as to territorial scope of Indian inheritance tax are to be followed as govern the Estate Duty in the United Kingdom; and

(3) that conditions are otherwise similar, *e.g.*, distribution of wealth, rates of mortality, the normal return obtained from capital, etc.

It will then be possible to suggest modifications arising out of differences in the conditions covered by head (3), and to apply the result to any concrete scheme, with due allowance for any variations that such scheme may exhibit as regards heads (1) and (2) above.

Although the collections will depend on the accidents of human mortality, it will have to be assumed that the "law of averages" will roughly equalise the yield from year to year, as has been the experience of Great Britain.

3. *Assessment of Estate Duty in United Kingdom.*—In the latest year for which figures have been received, namely, 1935-36, the net yield of Estate Duty in Great Britain was *£M.78·1. There was an exemption limit of £100, and above that a graded scale from 1 per cent, (up to £500), to 50 per cent, (above £M.2). The net capital value of the estates from which tax was taken was £M.570·8. The average incidence of the tax was 13⅝ per cent. (For the sake of simplicity, Legacy and Succession Duties are excluded from this calculation; but it may be mentioned that their yield was £9·8; the total capital assessed was £M.279·3; the rates varied, according to degree of relationship, from 1 per cent, to 10 per cent., and the average incidence, owing to the prevalence of bequests to near relations, was as low as 3½ per cent.).

4. *"Income yielding assets".*—Since it cannot be pretended that any direct relationship can be established between capital assets of all kinds and income assessed for income-tax, the first thing to do is to exclude from the total of £M.570·8 agricultural land £18·9. This reduces the total to £M.551·9. Next, we must deduct the value of any but what may be called "income-yielding assets", and the following deductions must therefore be made :—

	£M.
(1) Cash	52·5
(2) Policies of insurance	22·4
(3) Household goods	8·4
	83·3

This leaves a total, for income-yielding assets, excluding land, of £M.468·6.

*Millions of pounds sterling.

5. *Assessment of incomes for income-tax in the United Kingdom.*—The latest available report of the Commissioners of His Majesty's Inland Revenue, shows the net total of incomes assessed in 1934-35 as £M.2,587·7. From this we must make the following deductions as representing (*a*) agricultural land and (*b*) income mainly or wholly attributable to the asset which dies with a man, namely, his ability for work :—

	£M.
(*a*) (*i*) Schedule A, lands less repairs, etc. . . .	36·2
(*ii*) Schedude B, farmers' profits	28·7
(*b*) (*i*) Schedule D, finance, professions, etc. . .	181·9
(*ii*) Schedule E, wages and salaries . . .	1,290·0
	1,536·8

This leaves a total of £M1,050·9 for income from income-yielding assets, other than land.

6. *Great Britain ratio of valuations for Estate Duty to taxed income.*—The ratio in Great Britain of the value of income-yielding assets assessed in each year to Estate Duty to the annual income from such assets assessed to income-tax may therefore be put at 468·6 :1,050·9 or roughly 45 : 100. On the preliminary hypothesis stated in paragraph 2 above, therefore, we may assume that the annual assessment to Death Duty in India on "income-yielding assets" will be 45 per cent. of the annual assessment of income from such assets.

7. *Indian income figures.*—The All-India Income-tax Report and Returns (Return IV), shows the gross income assessed as Rs. 188·6 crores and net income as Rs. 177·7 crores. The former figure includes Rs. 73·1 crores under the head "Salaries". Income figures for "Professional earnings" are not separately shown, but the tax under this head was 8 per cent, of the tax under "Salaries", and on this footing we might put the income under the two heads together at 108 per cent. of Rs. 73.1, *i.e.*, Rs. 78 .9 crores. Having regard to the nature of the deductions shown in column 26 of Return IV, it is fair to assign a proportionate share of their total to these excluded heads; we thus take as net income under these heads 177/188×78·9, or Rs. 74·3 crores. Agricultural income is already automatically excluded. The net income from "income-yielding assets" may therefore be put at Rs. 103.4 crores (the excess of Rs. 177·7 crores over Rs. 74·3 crores).

Applying to this figure the ratio worked out above (paragraph 6), we reach a figure of Rs. 46·5 crores as representing the valuation of "income-yielding assets" assessed annually be Death Duty).

8. *Difference in distribution of wealth.*—Tax on this at 13⅔ per cent, would be Rs. 6 3 crores. It is, however, necessary to modify this figure by reference to differences in conditions such as were referred to in paragraph 2 (3) above. The most important difference lies in the relative distribution of wealth in the two countries; but, important as it is, the allowance to be made for this factor, is highly specualtive. The only method of calculation that suggests itself is one based on the assumption that the difference between the two countries in this respect will correspond to that which exists between them in regard to the distribution of income. A close examination of the income-tax statistics for both countries shows, that India tends to produce a much larger number, relative to the whole, of smaller incomes than England, and it may be supposed that the position is similar in regard to estates, as is only to be expected in a country where custom or law produces so much subdivision of estates as happens in India. On the best estimate that can be made on the basis of the distribution of incomes between large and small ones it would appear that the English scale of Estate Duty applied to Indian conditions would yield an average, not of 13⅔ per cent., but of hardly more than half this amount, say 7½ per cent. On this basis, we must reduce the figure of Rs. 6·3 crores given in the first sentence of this paragraph to Rs. 3·5 crores.

9. *Other differences and final estimate of tax from income-yielding assets.*—There is a variety of other factors which will tend to vitiate deductions from a comparison with United Kingdom statistics, some tending to make the yield

of Death Duty (at same rates) higher in relation to income assessment than in England, and others tending to have the opposite effect. Probably the most important of these factors is a favourable one, namely, the fact that the incomes assessed to tax in the United Kingdom on persons domiciled there include a large amount of income earned abroad such as has hitherto been largely exempted from Indian income-tax when earned by persons domiciled in India; the assets yielding such income to persons domiciled in India would come within the scope of the proposed duty if it follows the British model. A careful study of all these differences points to the conclusion that the favourable factors will have appreciably more weight than the unfavourable ones. In this view, we may perhaps add to the figure given at the end of paragraph 8 a net enhancement of about 10 per cent., raising it to 3·8 crores.

10. *Other assets*.—It is now necessary to make an addition to cover assets other than "income-yielding assets". In the United Kingdom the value of such assets amounted to about the fifth of that of the income-yielding assets. It would appear that a higher proportion should be taken in India; *firstly*, the habit of investment has spread greatly during recent generations, but there must still be in India a great many cases in which the cash and jewellery included in an estate relative to its total value is much greater than is common in England, and the fact that household effects may tend, relatively, to be of less value will only detract from this to a limited extent; *secondly*, there must be a large body of persons in India who are excluded from income-tax assessment because their income is agricultural, but who possess substantial sums in specie and jewellery. It would, on the other hand, be optimistic to suppose that, for some considerable period at least, it will be possible to prevent a great deal of evasion of Death Duty in respect of such chattels (*cf.*, Taxation Enquiry Committee Report, Vol. I, paragraph 355, second sub-paragraph); and for this reason as well as because there may be some limited exemption of such assets as suggested by that Committee in paragraph 379 of their Report, it may, on the whole, be reasonable to assume that this element will not enhance the field of Death Duty by a larger addition than one-fifth. This gives us a final total for yield, at United Kingdom rates of Estate Duty, of Rs. $4\frac{1}{2}$ crores.

11. *Conclusion*.—The Taxation Enquiry Committee (without reference to any estimate of yield) proposed an exemption limit of Rs. 5,000 and above that, rates of duty on the slab system rising from $\frac{1}{2}$ per cent, to 6 per cent., which (taking middle points of each grade) would be equal to a step system scale rising from ·16 per cent. to 4·1 per cent., up to 20 lakhs, thereafter to 5·6 per cent. at 1 crore, and so forth. On the best calculation that can be made, on the basis of the British Inland Revenue Returns, but allowing for the fact that the relative preponderance of small estates will mean that the fixing of a high exemption limit and the damaging effects of the slab system at the bottom will be more severely felt in India than in England, it would be optimistic to suppose that the Taxation Enquiry Committee's scheme, if adopted, would yield more than seventy lakhs. Such a sum, if divided among the provinces after deducting cost of collection, would give so little to each that it is clearly necessary to contemplate something much severer than the Committee's plan unless (1) a very low incidence is deliberately selected with the avowed object of increasing it appreciably after more experience has been gained of the practical problems of administration that will arise and after the public have been educated to the idea of this new tax, or (*2*) a tax at a very low level is imposed not so much for the sake of its own yield as in order to counterbalance similar provincial taxes on succession to agricultural land. It is fair to remember that the Committee's recommendations drew no such distinction as the Constitution now requires us to draw between agricultural land and other property. Even so, their scale was unnecessarily lenient in the lower stages if a comparison is made with the existing court-fees on probate and letters of administration, which range from 2 per cent. (minimum) to 3 per cent. (and in some provinces 7 per cent.).

Section VII.

Machinery for Collection.

Payment of Agency work.—Under the Government of India Act, the legislation under consideration will be Federal and consequently the administration will be Federal except to the extent that use may be made of provincial

agency under section 124 of the Act. In that event, the Provinces will be entitled to payment, but as the cost of collection is to be deducted by the Centre before the proceeds of the tax are distributed, the amounts of such payments will fall upon the Provinces themselves to the extent that they enjoy the proceeds of the tax assessed within their jurisdictions, and it would save time and trouble if the process were short-circuited by an arrangement under which each Province would not claim agency payments except in proportion to the amount of the tax collected in its jurisdiction which went to other Provinces. In this connection, reference may be made to the proposals for the distribution of proceeds contained in Section IX.

2. *Existing procedure in India.*—The procedure for recovering the existing court-fees on probate, etc., is as follows (*see* Chapter IIIA, Court Fees Act, 1870) :—(1) The person applying for probate or letters of administration estimates the value of the estate and files it in the form prescribed (Schedule III, Court Fees Act); (2) he pays court-fees accordingly on his application to the Court; and (3) the Court gives notice of the application to the Collector or Chief Controlling Revenue Authority; the Collector enquires into the correctness of the estimate and if he thinks the value has been underestimated, requires the petitioner to amend the valuation; if the petitioner declines, the Collector moves the Court concerned to enquire into the true value; if the Court find that there has been an undervaluation, the deficiency in fees is recoverable by revenue process along with the penalty prescribed in section 19G. (It will be observed that the declaration and the finding of the Court are public documents not enjoying any confidential character.)

3. *British procedure.*—The procedure relating to the British Death Duties is as follows :—

Stamp Act, 1815, section 38.

(1) a declaration of value called the Inland Refund affidavit must accompany the application for grant of representation;

Finance Act, 1894, section 8(7).

(2) duty is payable to the Commissioners of Inland Revenue on such valuation;

Ibid.

(3) if too little duty has been paid the Commissioners may recover the balance due as "duty in arrear";

Ibid, section 10.

(4) an aggrieved party may appeal to the County Court or High Court; in disposing of such appeals, the Court may refer any point of disputed valuation to a qualified valuer appointed by the County Council.

4. *Extent to which Civil Courts take part.*—These two procedures have in common the fundamental proposition that in neither country can representation be granted until an affidavit or other declaration of the value has been presented. To that extent responsibility is shared by the Courts with the Revenue officers. Such a proposition is applicable only if succession cannot be enjoyed without representation; and that requirement is at present absent in the case of the majority communities in India (except for Hindu wills in some circumstances). The Taxation Enquiry Committee recommended that representation should be made universally compulsory. This proposal has been discussed separately (section IV). If it is adopted, it will be possible to apply the existing Indian procedure (after removing the defects in it which are described in paragraph 58 of the note of the Legal Adviser to the Taxation Enquiry Committee, Vol. II, page 220), or to adopt the English procedure. The volume of work will however be enormously increased, and Collectors, in some places at least, will have to be assisted by a special staff, even if Chapter IIIA of the Court Fees Act, 1870, is not amended. The Committee recommended the employment of judicial officers (including District Munsifs) together with a special class of Probate Registrars to deal with non-contentious cases. But the conducting of preliminary enquiries is essentially a process that should be left to Revenue officers, and it would be better, as at present, to bring in the Courts only after such preliminary enquiries have been held and the Revenue officer has decided what material

should be brought on the record in open Court. Even so, it is worth considering whether the British system, which leaves it to the Revenue authorities to make, not a preliminary enquiry, but a definite assessment, bringing in the Courts (apart from the supply of copies of affidavits or other declarations of value filed in Court) at the appeal stage only, will not provide a more convenient way of dealing with the greatly enlarged number of cases. If, on the other hand, compulsory universal representation is not introduced, the process of recovery will become essentially a revenue process, and it will be wholly inappropriate to bring in any judicial authority before the appeal stage (apart, again, from the supply of copies of affidavits, etc., in those cases where they are filed.)

5. *Collection through Revenue officers.*—Assuming then that in any case an important body of duties will devolve upon Revenue officers, it falls to be considered whether such Revenue officers should be Federal officers, working under the Central Board of Revenue, or (as at present) District Collectors, who are Provincial officers. Constitutionally, it would seem that the former plan should be preferred except to the extent that the use of Provincial agency may offer definite advantages in the way of convenience either to the public or to the Government.

6. *Income-tax officers.*—It has already been pointed out that with the exclusion of agricultural land the principal assets to be brought under taxation will be those which have been described as "income yielding assets", particularly investments in stocks and shares or shares in a business or house property. The income derived from these assets will, subject to the exemption limit, have been assessed for income-tax during the lifetime of the person whose property they were. The task of checking the declarations of value of these assets is therefore closely connected with the work which has already been done in connection with the checking of declarations of income made by the deceased or still to be made by his successors, and it is therefore clearly advantageous that the officers appointed to do this work should be officers already possessed of experience of income-tax work and also that by a suitable amendment of section 54 of the Income-tax Act they should be given access to all records connected with the relative income-tax assessments.

7. *District officers.*—The case of other assets is different. It is true that there will be cases where enquiry for income-tax purposes into the accounts of an assessee, particularly one engaged in business, will have thrown some light upon the purchase or sale by him of such things as jewellery or the transfer of cash in hand into the working capital of business. There will however be a large number of cases where such assets belong to persons whose wealth, consisting of agricultural income, does not produce any liability to Indian Income-tax so that the Income-tax officers will have no information about them, and for this reason it seems to be desirable that the District Collectors and their staffs should be given authority to determine the amount and value of such assets (in consultation where suitable with officers connected with the Income-tax administration). The scheme which is suggested, therefore, is that primary responsibility for assessing Death Duty should be imposed upon officers working under the Central Board of Revenue, but that they should have statutory authority to call for reports as regards certain classes of assets from the Collectors. The results would be co-ordinated by the former officers and the tax recovered by them.

8. *Organisation of Central staff.*—As regards the actual officers to be employed it seems to be desirable that the basic work should be done by Income-tax officers seconded for the special duty and not by all Income-tax officers in addition to their regular duties. For years to come at least, assessment of inheritance tax will involve a considerable degree of expert knowledge and it would be better to concentrate such expert knowledge than to attempt to diffuse it over all the officers of the Income-tax administration. It would be uneconomical to define areas for each of these special officers. The territorial distribution might follow that of the charges of Commissioners of Income-tax; under each of these there would be one or more Assistant Commissioners empowered to deal with inheritance tax cases as either a whole-time or a part-time duty, and the Commissioner would assign to each of these Assistant Commissioners the services

of so many of the special officers as the requirements of the moment might dictate. The number of assessment cases of any importance will of course be far fewer than the number of Income-tax assessment proceedings conducted each year (in Great Britain, the number of estates dealt with in a year appears to be something like 5 per cent. of the number of income-tax assessments made), while the necessity for accurate assessment will be more important both to the Government and to those upon whom the tax falls. The actual assessment orders might therefore be passed by the Assistant Commissioners mentioned, who would be responsible for co-ordinating the results presented to them by their own special officers and by the District Collectors.

Section VIII.

Dual Taxation.

The British scheme of relief.—In British India, at present, the court-fees on probate, etc., are leviable only on property situated in British India and no relief is given on account of the inclusion of the property in an estate taxed abroad. In the United Kingdom, also, no relief is given in respect of property situated in that country on account of its inclusion in an estate taxable abroad. But the British law provides also for taxation of property situated outside that country, and in respect of such property certain reliefs are given. These may take two forms :—

(*a*) deduction of the amount of Estate or Succession Duty paid abroad from the amount of British *duty* payable (in respect of the same property only) ; and

(*b*) deduction of the amount of such duty paid abroad from the *value* of the property for the purpose of assessing the British duty.

Plan (*a*) applies in respect of countries in the British Empire which (*i*) do not tax property situated in the United Kingdom or (*ii*) have arrangements for the reciprocal application of this plan ; British India falls in class (*i*) and is therefore included in the list of countries to which plan (*a*) applies. If her law is so altered as to bring property situated abroad within the scope of her taxation in any circumstances, she will have herself to adopt plan (*a*) or lose her place in that list. Plan (*b*) applies to other countries in the British Empire and to all foreign countries.

2. *Attraction of this scheme for India.*—Put shortly, where the country of situation and the country of domicile are not the same, this scheme gives the country of situation first claim and the country of domicile second claim. This is a straightforward scheme, and should be particularly attractive to a country like India, since the volume of property situated in this country but owned by persons domiciled abroad (whether in Indian States or overseas) is probably greater than that of property situated abroad but owned by persons domiciled here.

3. *To what countries should it be applied?*—If the Indian law is altered so as to introduce the taxation of property situated abroad and if in consequence the scheme above described is adopted, a decision must be taken as to the countries to which plan (*a*) should be applied. In view of the existing British law, reciprocity demands that it should be extended to Great Britain. There would also seem to be strong grounds for extending it to all Indian States. As for other countries, it is for consideration whether power should be taken to extend it on a reciprocal basis to—

(*i*) The two parts of Ireland ;

(*ii*) Dominions ;

(*iii*) Colonies and Protectorates (*e.g.*, Ceylon and Malaya) ; and

(*iv*) Foreign countries.

As a mere matter of machinery, the actual inclusion of any particular country in the list should, as in England, be left to the Government (which would have to satisfy itself that the conditions of non-taxation or reciprocity existed), and the Government should have power to remove any country from the list on ascertaining that such conditions had ceased to exist.

Plan (*b*) would apply to other countries.

Section IX.

Distribution of Proceeds.

Parallel with income-tax.—Section 137 of the Government of India Act gives the Federal Legislature a free hand in the formulating of principles of distribution of the net proceeds of the tax. In approaching this question, however, it is well to consider the observations of those committees whose views were before Parliament when the Act was passed, as well as of Sir Otto Niemeyer, who was required to evolve a method of distribution in the parallel case of taxes on income.

2. *Distribution of income-tax.*—The Federal Finance Committee of 1932 did not discuss the distribution of inheritance taxes in any detail for the reason that they thought that such duties could not be relied upon as a source of revenue in the near future (paragraph 36). The ground which they gave for recommending that the tax should be imposed by the Federal Government for the benefit of the Units was that there was widespread recognition of the need for uniformity of taxation throughout India (paragraph 99). They made definite recommendations as regards the distribution of the proceeds of taxes on income, namely, that to the extent that such taxes could be assigned to the personal payment of residents in the provinces their proceeds should go to the provinces of residence but the balance (representing, according to their estimate, some 12 per cent, of the whole) should be distributed on the population basis. The Joint Parliamentary Committee similarly made no specific recommendation as regards the distribution of proceeds of inheritance taxes (paragraph 261), and as regards taxes on income refrained from suggesting a detailed scheme though observing that the Federal Finance Committee suggested a useful line of approach on the assumption that an automatic basis of distribution could be fixed.

3. Sir Otto Niemeyer came to the conclusion that substantial justice would be done by fixing the scale of distribution partly on residence and partly on population, paying to neither factor a rigidly pedantic deference, for which the actual data provided insufficient justification. He also preferred, on practical grounds a distribution, not on figures to be ascertained each year so far as they might be ascertainable, but on fixed percentages.

4. The first plan that suggests itself in connection with Succession Duties is the laying down of a scale of percentages comparable to that which Sir Otto Niemeyer laid down for taxes on income. It is, however, difficult to suggest any reason for laying down such percentages on any other basis than one resting on actuals. It may be surmised that Sir Otto's departure from what he described as "a rigidly pedantic deference" to the factors of residence and population was influenced by his appreciation of the varying budgetary needs of the various provinces. This is a factor which may be regarded as having been disposed of by the decision based on his recommendations.

5. Turning to actuals, we could, for the purpose of distributing the proceeds of an inheritance tax, take into consideration—

(*a*) the province in which the forum of disposition is situated;

(*b*) the province of residence of the various successors to the estate;

(*c*) the province of residence of the deceased whether domiciled or not;

(*d*) the province in which the property is situated.

Plan (*a*) would only be appropriate if the duty took the form of a Succession Duty, involving compulsory representation, and even so would produce haphazard results comparable to those which would have followed on taking the collection basis for the distribution of income-tax. Plan (*b*) is also suited only to a Succession Duty, and, apart from this, may be rejected at once as involving too much complication in administration. Plan (*c*) would leave uncovered all property of persons not resident in British India. Plan (*d*) would leave uncovered all property not situated in British India if such property is made taxable in any case. It is also open to another objection; although with regard to tangible assets, including house property and chattels, it would be a straightforward plan, there would be a large element of the accidental about the provincial situation of such properties as Government securities.

Either plan (*c*) or plan (*d*) might be accepted or a combination of the two; but in either case, there will be a residue for distribution on an arbitrary basis (which might be the population basis). If (with this qualification) neither plan is thought wholly equitable, property might be classified as follows :—

(*i*) "tangible assets" (to be specified) situated in British India, whether of deceased residents or non-residents;
(*ii*) other assets situated in British India of deceased residents;
(*iii*) any assets situated outside British India of deceased residents;
(*iv*) any assets, not covered by (*i*), of deceased non-residents, wherever situated.

The proportionate share of tax on item (*i*) might go to the province of situation; that on items (*ii*) and (*iii*) to the province of residence of the deceased; that on item (*iv*) would be distributed on the population basis.

6. *Allowance for court-fees : Property in one Province.*—In section I of this Memorandum it was observed that it would be necessary either to abolish (wholly or mainly) the existing court-fees on probate, etc., or to allow the amount of such court-fees paid (except such proportion thereof as might be attributable to agricultural land) as a deduction from the amount of the new duty that was to be collected in respect of the same property. If the latter course is adopted, some adjustment on that account will have to be made in the distribution of the proceeds of the new duty. The court-fees in question now go to the province in which probate, etc., is granted. Such a grant is valid only within the province in which it is made if it is made by a District Judge (with an exception to be mentioned later) or if it is a limited grant made by a High Court; that will only happen where property is all in the same province, and cases in which the province of situation is not also the province of residence of the deceased will be so rare that they can be ignored. In such cases (which are probably the most numerous) it is perhaps unnecessary to make any adjustment, since the province which has received the court-fee will be the same as the one to which the inheritance tax on the same estate, with the court-fee deducted, will be payable.

7. *Allowance for court-fees : Property in more than one Province.*—Under section 273, proviso, of the Indian Succession Act, 1925, a District Judge's grant is valid throughout British India if the deceased had a fixed abode in his jurisdiction and if the total estate affected beyond the limits of the province does not exceed Rs. 10,000. This would have the effect of giving all to the province of residence and none to that of situation, where different. That is not too bad : the real trouble comes with probates granted by High Courts. Such grants can be sought and obtained from any High Court that has jurisdiction over any part of the estate; and they are valid throughout British India. The court-fees thus go to only one of the provinces of situation and that not necessarily the province of residence. That position, by leaving the matter to the whim of the executor, may produce a most haphazard result, and is indeed likely to do so now that court-fee rates have been raised in some provinces but not in other provinces, so that the amount of the court-fee may determine the choice of the High Court to which to apply. It may well be held that such an illogical position ought not to be given the sanction, even tacit, of new legislation under section 137 of the Government of India Act. The way to avoid this would be as follows :—A record would be kept in the case of every grant of probate, etc., which was not confined to a single province, dividing the value and, proportionately, the court-fee paid, between (*a*) agricultural land, (*b*) "tangible assets" and (*c*) other property. The figures under (*b*) would then be divided proportionately between all the provinces in which the property was situated; and the total under (*b*) would be recorded as a debit to the province of collection and the proportionate shares of it as credits to all the provinces concerned. The total under (*c*) would be recorded as a debit to the province of collection and a credit to the province of residence of the deceased (if that was the same as the province of collection, the *plus* and *minus* entries would cancel each other out) or, if the deceased was not a resident of any province, to the Central fund for distribution on (say) the population basis. The net results of the credits and debits so recorded for each province would be applied as an addition and a deduction to the province's share of the actual collections of Death Duty calculated as in paragraph 5 above; the grand totals of the credits for all the provinces and of the debits for all the provinces would, of course, be equal, the one to the other, so that the grand total of the amounts distributed would not be affected.

ANNEXURE II.

INHERITANCE TAXES IN INDIA.

Supplementary Note.

The Memorandum was written before the discussions on the Indian Income-tax (Amendment) Bill had been concluded; and the writer has been asked to note on the bearings of those discussions on two problems which were dealt with in the Memorandum, *viz.*, (1) that of including in the scope of inheritance tax movable property situated outside British India—section V(*i*)—and (2) that of dual taxation relief—section VIII.

2. The first of these subjects is comparable, up to a point with the provisions of clause 4 of the Income-tax Bill in so far as that clause related to the levying of income-tax on income accruing or arising outside British India, but neither derived from a business controlled in or a profession or vocation set up in India nor brought into British India. As regards such income the original proposal was that income-tax should be recovered if the owner was both *resident* and *domiciled*. The Bill as finally passed abandoned the domicile test, and made such foreign investment income, not brought in, liable to income-tax if the owner was both *resident* and "*ordinarily resident*". To be "ordinarily resident" a person must have been resident for nine out of the previous ten years and must also have been in British India for 730 days in the previous ten years. A further provision was introduced exempting from income-tax the first Rs. 4,500 of income of the kind described.

3. The original proposal, involving a combination of residence and domicile, was copied from the British law, but it was held by the Assembly that owing to differences in conditions the English law did not offer a good model in this respect. It has already been explained that the British law of death duties takes no account of residence, but makes liability depend on domicile. It would appear at first sight that the logical thing to do in this case also would be to desert the British model and to substitute "ordinary residence" for domicile. If this were done, the Indian inheritance tax would include in its scope all movable property situated outside British India of a deceased who at the time of his death was "ordinarily resident" in British India, but not of any other person, wherever domiciled; with, perhaps, an exemption (corresponding to the first Rs. 4,500 allowed for income-tax) of the capital amount that might yield such an income—say, one lakh of rupees.

4. The analogy of the cases of income-tax and death duties is, however, far from complete. The fact that the former is levied from year to year while the latter form a capital levy taken once for each life-time makes a great difference, as can be illustrated by the following example. A and B are both (say) Indian State subjects, resident for twenty years in British India but not domiciled. The heirs of each are in the State. Under the new law, each pays income-tax on his foreign income, during the last ten years of residence. A then dies, B retires and dies a year or two later. A's heirs suffer the inheritance tax on all A's movable property, whether in British India or not: B's heirs suffer inheritance tax only on B's movable property in British India. Such fortuitous results of the application of the test of "ordinary residence" are inherent in the fact that inheritance tax is a capital levy made at death but not on the occasion of the termination of residence otherwise than by death.

5. So far as concerns Europeans and Americans who become ordinary residents but not domiciled, during their time spent in Government service or in mercantile pursuits in British India, it may be remarked, apart from this element of the fortuitous, that, since the great majority of such persons (or, at any rate, of those who live long enough to become wealthy by their own exertions) leave the country before they die, a liability to inheritance tax on the foreign property of non-domiciled "ordinary residents" would be enforceable only in exceptional cases, and would not bring in much revenue.

6. There is another point which has already been mentioned in the original Memorandum, where it was suggested that the practical difficulties involved in the discovery and valuation of foreign property of deceased ordinary residents who are non-domiciled will be greater than those attending the case of persons who die possessing an Indian domicile.

7. If, in spite of these considerations, it is decided to introduce the "ordinary residence" criterion, it will perhaps be desirable, nonetheless, to retain the domicile criterion also *as an alternative*, to meet the case of wealthy British Indian subjects who, perhaps after retirement, may settle down in Indian States, but of whom it may reasonably be claimed that they still owe fiscal allegiance to British India.

8. *Dual taxation relief.*—The existing arrangements for double income-tax relief with Great Britain were much criticized during the passage of the Income-tax Bill though no amendment could be moved altering the basis of those arrangements. The main ground for criticism was that these arrangements divide the proceeds of the tax between the two countries, irrespective of the origin of the income; it was objected that the amount of income having its origin in British India which is taxed in both countries is much greater than the amount of income so taxed having its origin in Great Britain, so that much more of the benefit goes to British persons non-resident in India than to Indians non-resident in Great Britain, though the Indian Exchequer has to bear its share of the cost of relief in either case. It is reasonable to surmise that if the arrangements had been such as to leave the country of origin with its full income-tax, allowing the country of residence to take only the excess, if any, of its own rate over the rate of the country of origin, they would have been acceptable to public opinion. It has already been explained in the Memorandum that it is an arrangement of that kind which is comparable with the existing British scheme of dual taxation relief in respect of death duties (section VIII, 2). There is therefore no reason to revise the suggestion that in this respect the British law should be taken as a model for India.

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